

**From:** Watts, John (Feinstein)

**Sent:** Wednesday, October 1, 2014 3:40 PM

**To:** 'Tom Birmingham'; Bernhardt, David L.

**Subject:** Please let me know tonight if you have any concerns about the attached document

**Attachments:** draft language 10-1-2014 630pm.docx

I have attached yellow highlighted edits and responses to the agencies' redlined edits and comments on our proposed text. Please review and let me know tonight if it looks OK to you. I want to flag the following as potentially significant:

- 1) Edits to section 309 (still no definitive word back from the agencies on what they would accept);
- 2) Edits to the independent water operations panel in section 605 to evaluate the effectiveness of the legislation and recommend any appropriate legislative changes every five years (I think we are going to need this, and I would much rather give this to the independent panel than to the agencies, who will try to find ways to throw off the yoke of the legislation).
- 3) I am not including sunset language at this point in time.
- 4) I keep our section 303 but add at the end of the section language directing the agencies to do a 2015 drought plan.
- 5) Changes to section 203(h) on tracking adverse effects outside the biological opinions and adjusting management based on whether there are such effects.

Thanks. I plan to send this document to the agencies tomorrow morning to resolve all remaining issues in time to send language to the House by COB Friday.

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Title: To provide drought relief in the State of California, and for other purposes.

General Comments

1. We continue to believe that priority should be placed on the development and implementation of a 2015 Drought Operations Plan that can implement changes in operations of the CVP and SWP to improve water supplies in a very serious drought year in a manner that is consistent with the ESA and other applicable law. See alternative to Sec. 303 at the end of the document previously provided.
2. As part of a 2015 Drought Plan, we recommend investing immediately in improvements in monitoring and data gathering in order to enable more precision in operations targeting reductions in negative fish impacts through “real time” operational triggers. To the extend authors of the bill can support this goal in the underlying bill text, we would appreciate it.
3. An unintended consequence of significant new legislative directives is that they pose serious risks of impeding the success of 2015 Drought Operations and by triggering another aggressive round of litigation that will impede flexibility. We appreciate efforts that have been made to reduce litigation risk; however, as noted below there are provisions that we believe invite potential litigation.
4. We recommend against permanent legislation on how the CVP and the ESA should relate, and in particular against locking into permanent law references to specific operating criteria that are tied to specific biological opinions that are highly likely to change over time as circumstances change. We recommend including expiration dates for those titles or sections that are drought-specific or operating criteria specific.
5. In many instances, we do not have the capacity to implement these new directives and continue with other pressing Administration priorities, like the top priority of 2015 drought operations, responding to the biological opinion remand and completing the BDCP. Enactment of these new requirements will significantly displace ongoing priorities.
6. We have questions about some of the findings that we have been unable to confirm at this time due to uncertainty surrounding the source of the data. We will work on confirming these findings early next week but it would be helpful to understand the source of the information on the comments we have flagged. We expressly reserve the right to comment further on the findings at a later time once the source information is determined.

We provide the following technical observations on the legislative text.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

- (a) Short Title.—This Act may be cited as the “California Drought Relief Act of 2014”.
- (b) Table of Contents.—The table of contents of this Act is as follows:



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1 Sec.1.Short title; table of contents.

2 Sec.2.Findings.

3 Sec.3.Definitions.

4 **TITLE I—ADJUSTING DELTA SMELT MANAGEMENT**  
5 **BASED ON INCREASED REAL-TIME MONITORING AND**  
6 **UPDATED SCIENCE**

7 Sec.101.Definitions.

8 Sec.102.Revise incidental take level calculation to reflect new science.

9 Sec.103.Factoring increased real-time monitoring and updated science into delta smelt  
10 management.

11 **TITLE II—ENSURING SALMONID MANAGEMENT IS**  
12 **RESPONSIVE TO NEW SCIENCE**

13 Sec.201.Definitions.

14 Sec.202.Required scientific studies.

15 Sec.203.Process for ensuring salmonid management is responsive to new science.

16 Sec.204.Pilot program to protect native anadromous fish in the Stanislaus River.

17 Sec.205.CALFED invasive species pilot projects in the Sacramento-San Joaquin Bay Delta and  
18 its tributaries.

19 Sec.206.Mark fishery and harvest management.

20 Sec.207.New actions to benefit Central Valley salmonids.

21 **TITLE III—OPERATIONAL FLEXIBILITY AND DROUGHT**  
22 **RELIEF**

23 Sec.301.Findings.

24 Sec.302.Definitions.

25 Sec.303.Operational flexibility in times of drought.

26 Sec.304.Operation of cross-channel gates.

27 Sec.305.Flexibility for export/inflow ratio.

28 Sec.306.Emergency environmental reviews.

29 Sec.307.Prioritizing State revolving funds during droughts.

30 Sec.308.Increased flexibility for regular project operations.

31 Sec.309.Temporary operational flexibility for first few storms of 2014-2015 water year.

1 Sec.310.Expediting water transfers.

2 Sec.311.Warren Act contracts. [PLACEHOLDER]

3 Sec.312.Additional Warren Act contracts. [PLACEHOLDER]

## 4 TITLE IV—INCREASING WATER STORAGE

5 Sec.401.Findings.

6 Sec.402.CalFed storage feasibility studies.

7 Sec.403.Water storage project construction.

8 Sec.404.Other storage feasibility studies.

9 Sec.405.Dam safety projects with increased storage component.

10 Sec.406.Updating water operations manuals for non-Federal projects.

11 Sec.407.Central Valley Project.

## 12 TITLE V—WATER RIGHTS PROTECTIONS

13 Sec.501.Protections for State water project contractors.

14 Sec.502.Area of origin protections.

15 Sec.503.No redirected adverse impacts.

16 Sec.504.Effect on State laws.

## 17 TITLE VI—MISCELLANEOUS

18 Sec.601.Authorized service area.

19 Sec.602.Rescheduled water.

20 Sec.603.Fisheries disaster declaration.

21 Sec.604.Oversight board for Restoration Fund.

22 Sec.605.Water operations review panel.

23 Sec.606.Contingency in event of continuing resolution for fiscal year 2015.

24

## 25 SEC. 2. FINDINGS.

26 Congress finds that—

27 (1) As established in the Proclamation of a State of Emergency issued by the Governor of  
28 the State on January 17, 2014, the State is experiencing record dry conditions;

29 (2) Extremely dry conditions have persisted in the State since 2012, and the drought  
30 conditions are likely to persist into the future;

31 (3) As of September 2014, the National Weather Service’s forecast does not show a high

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1 likelihood of the State experiencing ~~significant~~ above normal precipitation for the remainder  
2 of the calendar year.

3 (4) The water supplies of the State are at record-low levels, as indicated by the fact that  
4 all major Central Valley Project reservoir levels were at or below 40 percent of capacity as  
5 of September 11, 2014.

6 (5) The lack of precipitation has been a significant contributing factor to the 6,091 fires  
7 experienced in the State as of September 15, 2014, and which covered nearly 400,000 acres.

8 (6) According to a study released by the University of California, Davis in July 2014, the  
9 drought has led to the fallowing of 428,000 acres of farmland, loss of \$810 million in crop  
10 revenue, loss of \$203 million in dairy and other livestock value, and increased groundwater  
11 pumping costs by \$454 million. The statewide economic costs are estimated to be \$2.2  
12 billion, with over 17,000 seasonal and part-time agricultural jobs lost.

13 (7) CVPIA Level II ~~W~~water deliveries to refuges have also ~~declined~~ been reduced by  
14 25% in the north of Delta region, and by 35% in the south of Delta region.

15 (8) Only one-sixth of the usual acres of rice fields are being flooded this fall, which leads  
16 to a significant decline in habitat for migratory birds and an increased risk of disease at the  
17 remaining wetlands due to overcrowding of such birds.

18 (9) The drought of 2013 through 2014 constitutes a serious emergency that poses  
19 immediate and severe risks to human life and safety and to the environment throughout the  
20 State;

21 (10) The serious emergency described in paragraph (4) requires—

22 (A) immediate and credible action that respects the complexity of the water system  
23 of the State and the importance of the water system to the entire State; and

24 (B) policies that do not pit stakeholders against one another, which history shows  
25 only leads to costly litigation that benefits no one and prevents any real solutions;

26 (11) Federal law (including regulations) directly authorizes expedited decisionmaking  
27 procedures and environmental and public review procedures to enable timely and  
28 appropriate implementation of actions to respond to the type and severity of the serious  
29 emergency described in paragraph (4); and

30 (12) The serious emergency described in paragraph (4) fully satisfies the conditions  
31 necessary for the exercise of emergency decisionmaking, analytical, and public review  
32 requirements under—

33 (A) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

34 (B) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

35 (C) water control management procedures of the Corps of Engineers described in  
36 section 222.5 of title 33, Code of Federal Regulations (including successor  
37 regulations); and

38 (D) the Reclamation States Emergency Drought Relief Act of 1991 (Public Law  
39 102–250; 106 Stat. 53).

**Commented [A1]:** Awaiting feedback from DOI per comment immediately below.

**Commented [A2]:** This looks a little low now. The smaller CVP reservoirs (folsom and millerton) are closer to 35%, but the bigger ones (Shasta, NM, Trinity, San Luis) are down to 20-25%. DOI will work with bill author to help verify and, if appropriate, suggest revisions to language.

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(13) The 2008 smelt biological opinion and 2009 salmonid biological opinion contain reasonable and prudent alternatives to protect endangered-listed fish species from being harmed-jeopardized by operation of the Central Valley Project and State Water Project and to prevent adverse modification of designated critical habitat.

(14) The effect of those reasonable and prudent alternatives in the biological opinions may restrict the amount of water pumping that can occur to deliver water for agricultural, municipal, industrial, groundwater, and refuge uses within the Central Valley of California.

(15) Data on the difference between water demand and reliable water supplies for various regions south of the delta, including the San Joaquin Valley, indicate there is a significant annual gap between reliable water supplies to meet agricultural, municipal and industrial, groundwater, and refuges water needs within the South of Delta and Friant Division of the Central Valley Project and the State Water Project south of the Sacramento-San Joaquin River Delta and north of the Tehachapi mountain range and the demands of those areas. This gap varies depending on the methodology of the analysis performed, but can be represented in the following ways:

(a) For Central Valley Project South-of-Delta water service contractors, if it is assumed that a water supply deficit is the difference in the amount of water available for allocation versus the maximum contract quantity, particularly in more recent years, then the water supply deficits that have developed from 1992 to 2014 as a result of changes besides natural variations in hydrology during this timeframe range between 720,000 and 1,100,000 acre-feet.

(b) For Central Valley Project and State Water Project water service contractors south of the Delta and north of the Tehachapi mountain range, if it is assumed that a water supply deficit is the difference between reliable water supplies, including maximum water contract deliveries, safe yield of groundwater, safe yield of local and surface supplies and long-term contracted water transfers, and water demands, including water demands from agriculture, municipal and industrial and refuge contractors, then the water supply deficit ranges between approximately 2,500,000 to 2,700,000 acre-feet.

(c) The California Water Plan evaluated outcomes under current conditions under 198 combinations of climate and growth scenarios, projecting a range of urban and agricultural reliability into the future. Reliability in this instance is defined as the percentage of years in which demand is sufficiently met by supply. Reliability across a range of futures within the San Joaquin Valley can be presented as:

(1) For the San Joaquin River Hydrologic Region, as defined in the California Water Plan, reliability ranges from:

(A) For urban supply reliability, reliability ranges between 90 and 100 percent, with a mean reliability across futures in the high 90<sup>th</sup> percentile; and

(B) For agricultural supply reliability, reliability ranges between 70 and 100 percent, with a mean reliability across futures in the mid-90<sup>th</sup> percentile.

**Commented [A3]:** Need to verify the accuracy of these assertions of fact in this and subsequent paragraphs. Administration stands ready to help verify.

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(2) For the Tulare Lake Hydrologic Region, as defined in the California Water Plan, reliability ranges from:

(A) For urban supply reliability, reliability ranges between 70 and 100 percent, with a mean reliability across futures in the mid-90<sup>th</sup> percentile; and

(B) For agricultural supply reliability, reliability ranges between 20 and 100 percent, with a mean reliability across futures in the low 70<sup>th</sup> percentile.

(16) Since the issuance of the biological opinions, recent studies have raised questions about the benefits to endangered salmonid populations from water pumping restrictions, including:

a) Expert panel reviews have concluded that instantaneous water velocities in the tidal Delta affect juvenile salmonids, not “tidally average” flows, as previously assumed. Based on instantaneous water velocity modeling, water exports have a much smaller area of effect than was previously believed.

b) Tagging studies conducted since 1993 (representing more than 28 million fish) demonstrate that the proportion of Sacramento Basin origin Chinook salmon entrained into the pumping facilities (including pre-screen losses) are on average less than 1/10 of 1%; and

c) Telemetry studies of Sacramento Basin and San Joaquin Basin origin juvenile Chinook salmon have not demonstrated any significant adverse effect from water exports on fish survival.

considerable uncertainty still exists about the benefits to endangered listed fish populations from water pumping restrictions. For example, hydrodynamic data, acoustic telemetry studies, and other recent studies found that through Delta survival rates of salmonid species do not correlate directly and clearly with certain water pumping restrictions, in particular limitations to Old and Middle River flows to levels less negative than -5,000 cubic feet per second.

(17) Data of pumping activities at the Central Valley Project and State Water Project delta pumps identifies that, on average from 2008 to 2014, pumping activity takes 893 delta smelt annually with an authorized take level of 5,003 delta smelt annually – according to the biological opinion issued December 15, 2008.

(18) It is worth exploring whether there is a way to implement the biological opinions that would preserve the protections afforded listed endangered fish and simultaneously increase water deliveries to the Central Valley Project and State Water Project without weakening environmental laws or protections.

(19) In 2014, better information exists than was known in 2008 concerning conditions and operations that may or may not lead to high salvage events that jeopardize the fish populations, and what alternative management actions can be taken to avoid jeopardy.

(20) Alternative management strategies, such as trapping and barging juvenile salmon through the Delta, removing non-native species, enhancing habitat, and monitoring fish movement and location in real-time can contribute significantly to protecting and

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Commented [A4]: We agree with the first sentence. We do not agree with the second and recommend its deletion. There are direct correlations between negative OMRs and raw salvage. We acknowledge that disagreements exist around these correlations and their significance – a central topic in the active litigation now pending before the 9<sup>th</sup> Circuit Court of Appeals.

Commented [A5]: In response to the agency concerns stated in the comment immediately above, we have revised this finding to more narrowly and factually state the findings of the recent studies. At the request of the agencies, we have also provided supporting citations for these findings. It is important to us to mention these studies, since the existence of new scientific information is a key part of the rationale for the bill and its proposed reexamination of what measures can protect the fish while minimizing water supply disruptions.

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Commented [A6]: We need to verify this with bill author.

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recovering these endangered fish species, and at potentially lower costs to water supplies.

(21) Resolution of fundamental policy questions concerning the extent to which application of the Endangered Species Act affects the operation of the Central Valley Project and State Water Project is the responsibility of Congress.

### SEC. 3. DEFINITIONS.

In this Act:

(1) DELTA.—The term “Delta” means the Sacramento-San Joaquin Delta and the Suisun Marsh, as defined in sections 12220 and 29101 of the California Public Resources Code.

(2) Export Pumping Rates.—The term “export pumping rates” means the rates of pumping at the W.C. “Bill” Jones Pumping Plant and the Harvey O. Banks Pumping Plant, in the southern Delta.

(3) JEOPARDY.—The term “jeopardy” means to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.

(4) OMR.—The term “OMR” means the Old and Middle River in the Delta.

(5) OMR FLOW OF -5000 CFS.—The term “OMR flow of -5000 cfs” means Old and Middle River flow of negative 5,000 cubic feet per second as measured by—

(A) the smelt biological opinion; and

(B) the salmonid biological opinion.

(6) SALMONID BIOLOGICAL OPINION.—The term “salmonid biological opinion” means the biological opinion issued by the National Marine Fisheries Service on June 4, 2009.

(7) SMELT BIOLOGICAL OPINION.—The term “smelt biological opinion” means the biological opinion on the Long-Term Operational Criteria and Plan for coordination of the Central Valley Project and State Water Project issued by the United States Fish and Wildlife Service on December 15, 2008.

(8) STATE.—The term “State” means the State of California.

## TITLE I—ADJUSTING DELTA SMELT MANAGEMENT BASED ON INCREASED REAL-TIME MONITORING AND UPDATED SCIENCE

### SEC. 101. DEFINITIONS.

In this title:

(1) DIRECTOR.—The term “Director” means the Director of the United States Fish and Wildlife Service.



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(2) DELTA SMELT.—The term “delta smelt” means the fish species with the scientific name *Hypomesus transpacificus*.

(3) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

SEC. 102. REVISE INCIDENTAL TAKE LEVEL CALCULATION FOR DELTA  
SMELT TO REFLECT NEW SCIENCE.

No later than October 1, 2015, the Director of Fish and Wildlife Service, in cooperation with other federal, state, and local agencies, shall use the best scientific and commercial data available to complete a review and, if warranted, a modification of the incidental take level in the 2008 delta smelt biological opinion that takes into account, among other considerations,—

- (a) salvage information available over at least 18 years;
- (b) updated or more recently developed statistical models;
- (c) updated scientific and commercial data; and
- (d) the most recent information regarding the environmental factors driving delta smelt salvage.

SEC. 103. FACTORING INCREASED REAL-TIME MONITORING AND UPDATED  
SCIENCE INTO DELTA SMELT MANAGEMENT.

(a) In General.—The reasonable and prudent alternatives described in the 2008 delta smelt biological opinion, as amended, and any successor opinions shall be implemented consistent with current best scientific and commercial data available, and implementation shall be adjusted accordingly as new scientific and commercial data are developed.

(b) Increased Monitoring to Inform Real-time Operations.— Contingent upon funding, the Secretary shall conduct additional surveys, on an annual basis at the appropriate time of the year based on environmental conditions, in collaboration with other delta science interests.

(1) In implementing this section, after seeking public input, the Secretary shall —

(A) use the most appropriate survey methods for the detection of delta smelt to determine the extent that adult delta smelt are distributed in relation to certain levels of turbidity, or other environmental factors that may influence salvage rate; and

(B) use results from appropriate survey methods for the detection of delta smelt to determine how the Central Valley Project and State Water Project may be operated more efficiently to minimize salvage while maximizing rates of water export.

(2) During the period beginning on December 1, 2014 and ending March 31, 2015, and in each successive December through March period, if suspended sediment loads enter the Delta from the Sacramento River and the suspended sediment loads appear likely to raise turbidity levels in Old River north of the export pumps from values below

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12 Nephelometric Turbidity Units (NTU) to values above 12 NTU, the Secretary shall—

(A) conduct daily monitoring using appropriate survey methods at locations including, but not limited to, the vicinity of Station 902 to determine the extent that adult Delta smelt are moving with turbidity toward the export pumps; and

(B) use results from the monitoring surveys at locations including, but not limited to, the vicinity of Station 902 to determine how increased trawling can inform daily real-time Central Valley Project and State Water Project operations to minimize salvage while maximizing rates of water export.

(c) Periodic Review of Monitoring.—At least once every 5 years, or sooner if the Secretary determines it is appropriate, the Secretary shall—

(1) evaluate whether the monitoring program under subsection (b), combined with other monitoring programs for the Delta, is providing sufficient data to inform Central Valley Project and State Water Project operations to minimize salvage while maximizing rates of water export; and

(2) determine whether the monitoring efforts should be changed in the short- or long-term to provide more useful data.

(d) Delta Smelt Distribution Study.—

(1) IN GENERAL.—No later than January 1, 2016, contingent upon funding, the Secretary, in collaboration with Delta science partners, shall implement new targeted sampling and monitoring specifically designed to understand delta smelt abundance, distribution, and the types of habitat occupied by delta smelt during all life stages.

(2) SAMPLING.—The Delta smelt distribution study shall, at a minimum—

(A) include recording water quality and tidal data;

(B) be designed to understand delta smelt abundance, distribution, habitat use, and movements throughout the Bay Delta during all seasons;

(C) consider areas not routinely sampled by existing monitoring programs, including wetland channels, near-shore water, depths below 35 feet, and shallow-water; and

(D) use the most biologically appropriate survey methods, including sampling gear suited to the type of sampling or monitoring.

(e) Scientifically supported implementation of Old and Middle River Flow requirements.—In implementing the provisions of the smelt biological opinion, or any successor biological opinion, on reverse flow in the Old and Middle Rivers, the Secretary shall—

(1) consider the relevant provisions of the biological opinion or any successor biological opinion;



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(2) manage reverse flow in Old and Middle Rivers as prescribed by the smelt biological opinion, or any successor biological opinion, to minimize water supply reductions for the Central Valley Project and the State Water Project;

(3) document in writing any significant facts about real-time conditions relevant to the determinations of reverse OMR flow rates, including—

(A) whether targeted real-time fish monitoring in Old River pursuant to this section, including monitoring in the vicinity of Station 902, indicates that a significant increase in the salvage of delta smelt is imminent; and

(B) whether near-term forecasts with available salvage models show under prevailing conditions that OMR flow of -5000 cubic feet per second will cause significantly increased take of delta smelt; and

(4) show in writing that any determination to manage OMR reverse flow at rates less negative than -5000 cubic feet per second is necessary to avoid adverse a significant population level effects a negative impact on the long-term survival of the Delta smelt, including an explanation of the data examined and the connection between those data and the choice made, after considering:

(A) the findings in paragraph (3);

(B) whether continued project operations over the remainder of the water year would exceed the incidental take level;

(C) the potential effects of entrainment on subsequent smelt abundance, including consideration of the distribution of the population throughout the Delta,

(D) the water temperature,

(E) other factors relevant to the determination; and

(F) whether any alternative measures could have a lesser water supply impact.

(5) for any subsequent biological opinion, make the showing required in paragraph (4) for any determination to manage OMR reverse flow at rates less negative than the upper limit in the biological opinion

(f) Memorandum of Understanding. No later than December 1, 2014, the Commissioner and the Director will execute of Memorandum of Understanding (MOU) to ensure that the smelt biological opinion is implemented in a manner that minimizes water supply losses while complying with applicable laws and regulations. If that MOU alters any procedures set out in the biological opinion, there will be no need to reinitiate consultation if those changes do not have an adverse effect on listed species and the implementation of the MOU would not be a major change to implementation of the biological opinion. Any change to procedures that does not create a new adverse effect

**Commented [A7]:** We recommend against using the standard of "significant population level effect" as a standard by which to establish specific operational criteria. We suggest "necessary to avoid adversely affecting Delta smelt", consistent with the MOU language, below.

**Commented [A8]:** This revised language was provided as a technical drafting service by the Department of the Interior

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**Commented [A9]:** This change is intended to address the agency concern expressed in the salmon title below about legislating permanent requirements regarding specific operating criteria. We acknowledge that the upper limit on OMR reverse flow could change in a future biological opinion. Because this subsection is about managing OMR reverse flow within the range established pursuant to the smelt biological opinion, we wanted the language to adjust to any changes in the range that the governing biological opinion establishes.

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to listed species will not alter ~~the application of the take exemption in the incidental take statement in parties' take coverage under~~ the biological opinion under the Endangered Species Act, ~~section 7(o)(2).~~

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Commented [A10]: Technical edit to spell out "Endangered Species Act" rather than just write, "ESA"

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## TITLE II—ENSURING SALMONID MANAGEMENT IS RESPONSIVE TO NEW SCIENCE

### SEC. 201. DEFINITIONS.

In this title:

(1) ASSISTANT ADMINISTRATOR.—The term "Assistant Administrator" means the Assistant Administrator of NOAA Fisheries..

(2) LISTED SALMONID SPECIES.—The term "listed salmonid species" means natural origin steelhead, natural origin genetic spring run Chinook, and genetic winter run Chinook salmon smolts.

(3) SECRETARY.—The term "Secretary" means the Secretary of Commerce.

### SEC. 202. REQUIRED SCIENTIFIC STUDIES.

(a) Trap and Barge Pilot Project to Increase Survivals Through the Delta.—The Assistant Administrator and the Commissioner shall, in collaboration with the U.S. Fish and Wildlife Service, the California Department of Fish and Wildlife and other interested parties, design, permit, implement and evaluate a pilot program to test the efficacy of an experimental trap and barge program to improve survivals of juvenile salmonids emigrating from the San Joaquin watershed through the Delta, as further described below.

Commented [A11]: We respectfully decline support for the development of a trap and haul program for listed steelhead as a priority for addressing drought challenges. We believe there are significant and powerful uncertainties around the ability to implement a scientifically credible pilot program for barging listed steelhead at this time. For example, earlier efforts to examine such a program have floundered on the sample sizes that would be required, and the lack of available fish to populate those samples. Bill authors should be aware of these limitations if choosing to proceed with this pilot project.

(1) Within 30 days of enactment, the Assistant Administrator shall convene a working group of the relevant agencies and other interested parties through which to develop and execute a plan for the design, budgeting, implementation and evaluation of such a pilot program, utilizing existing expertise on such trap and barge programs as may be available. Such plan shall detail a schedule and budget for the program, and identify the responsible parties for each element of the program.

Commented [A12]: We understand the concerns raised in the comments immediately above, but have talked to more than one respected salmon scientist who believes this is feasible to do. We understand that NOAA Fisheries acknowledges the very considerable benefits to salmon from trap-and-barge programs on the Columbia River. Given this considerable potential upside for the fish, we believe it is worth proceeding with a pilot program. The greatest potential downside is inconclusive results, not harm to the fish.

(2) The Assistant Administrator shall provide an opportunity for public review and comment on the pilot program and also simultaneously seek an expeditious independent peer review of the program to improve its rigor and likelihood of success.

(3) Upon completion of (2), above, the Assistant Administrator shall complete the necessary design and evaluations of the pilot program and seek such authorizations and permits as may be required for its prompt implementation and evaluation by the Assistant Administrator, the Commissioner or such other parties as they determine most suitable.

(4) Subject to the availability of funding, the Assistant Administrator and the Commissioner shall seek to commence implementation of the pilot program in 2015 or as soon thereafter as is possible, and shall conduct such pilot for such period of time as needed

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to evaluate the efficacy of the program to improve survivals across a range of environmental conditions.

(5) The Assistant Administrator and the Commissioner shall jointly report annually to the Senate Environment and Public Works Committee and the House Committee on Natural Resources their progress in implementing this section, estimated survival rates through the Delta for both juvenile salmonids that were barged through the Delta and those that were not barged, and if survival rates are significantly higher for barged fish as compared to other outmigrating smolts, the Assistant Administrator and Commissioner's recommendations regarding broadening the pilot program and any recommendations pursuant to section 203 and adjusting the provisions of the salmonid biological opinion pursuant to section 203.

(b) Tagging studies.

(1) IN GENERAL.—The Assistant Administrator, in collaboration with other delta science partners, shall implement tagging studies, including acoustic telemetry and PIT tagging studies as appropriate, wherein habitat, predators, flow conditions, or other factors are experimentally altered and the behavior and survival of tagged juvenile salmonids are observed. Studies may also be conducted to aid in the understanding of Chinook salmon and steelhead abundance, distribution, and survival.

(2) SAMPLING.—The sampling—

(A) shall include recording water quality and tidal data;

(B) will be designed to aid in the understanding of salmonid abundance, distribution, and movements throughout the Bay Delta, including estimates of through Delta survival from Knights Landing or from Mossdale to Chippis Island; and

(C) will supplement, not supplant, ongoing acoustic tag and coded wire survival studies in the San Joaquin and Sacramento Rivers which the Assistant Administrator determines are crucial for trend monitoring.

SEC. 203. PROCESS FOR ENSURING SALMONID  
MANAGEMENT IS RESPONSIVE TO NEW SCIENCE.

(a) General directive. The reasonable and prudent alternative described in the salmonid biological opinion allows for and anticipates adjustments in operating criteria to reflect the best scientific and commercial data currently available, and authorizes efforts to test and evaluate improvements in operations that will meet applicable regulatory requirements and enable improvements in water supply reliability. The Commissioner and the Assistant Administrator are hereby directed and encouraged to utilize these authorities fully as described below.

(b) Annual reviews of certain operating criteria. No later than December 31, 2015, and at least annually thereafter,

1. The Commissioner, in consultation with and with the assistance of the Assistant

**Commented [A13]:** Please understand that it might take a DECADE or more to conduct a pilot program, assuming it is feasible at the outset.

**Commented [A14]:** We have softened the language simply to require reporting on whatever recommendations the agencies make on this subject pursuant to section 203.

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**Commented [A15]:** We strongly support investing in precision water and fish management. Similar to the focus in Title 1, we recommend placing a higher priority on the design and implementation of tagging and monitoring programs that can assist in the implementation of "real time" operating criteria in lieu of calendar based criteria where feasible. Such a focus hopes a far higher degree of enhancing flexible water management operations than a number of the other current points of emphasis, including trap and haul, mass marking, etc. etc. which are likely to have no immediate or near term benefits.

**Commented [A16]:** We agree that real-time monitoring and management is useful and valuable; thus, we have inserted a new subsection (i) under Section 203 to address that suggestion.

**Commented [A17]:** We respectfully recommend against legislating permanent law governing how the CVP and the ESA should be implemented. Many of the specifics of the current biological opinions will change over time. Legislating permanent requirements governing specific operating criteria may impede the ability to make these changes and foster considerable confusions as to the prevailing statutory regime. We therefore recommend providing a time limitation to these provisions, enabling them to expire after the end of the drought or by a time certain.

**Commented [A18]:** We discussed the comments immediately above and below on the call with NOAA Fisheries on Monday, September 29, and pointed out that paragraph (b)(5) already addresses the concern about legislating permanent requirements regarding specific operating criteria. Paragraph (b)(5) makes clear that once the operating criteria or the RPAs change, the comparisons required under this section would be between future alternative management measures and future water supply restrictions, and their relative degree of improvements to through-Delta survival rates for listed salmonids. This section sets up a process for comparing alternative management measures that is NOT specific to any particular measures.

**Commented [A19]:** Per the comment above, we recommend including in section b) "and until such time as Action IV 2 3 is superseded"

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1 Administrator shall commence annual efforts to examine and identify adjustments to the  
2 timing of pumping operations in initiation of Action IV.2.3 pertaining to negative OMR  
3 flows, subject to paragraph (5).

4  
5 2. The Commissioner, in consultation with and with the assistance of the Assistant  
6 Administrator, shall examine and identify adjustments in the timing, triggers or other  
7 operational details relating to the implementation of pumping restrictions in Action  
8 IV.2.1 pertaining to the inflow to exports requirements, subject to paragraph (5).

9  
10 3. Pursuant to the consultation and assessments carried out under paragraphs (1) and (2) of  
11 this subsection, the Assistant Administrator Commissioner make recommendations to the  
12 Assistant Administrator Commissioner on adjustments that, in the exercise of the adaptive  
13 management provisions of the 2009 biological opinion, can improve water supplies and  
14 are consistent with the requirements of applicable law and as further described in  
15 subsection (c).

16  
17 4. The Assistant Administrator and the Commissioner shall implement those adjustments  
18 for which the conditions under subsection (c) are met.

19  
20 5. The Assistant Administrator and the Commissioner shall review and identify adjustments  
21 to water supply restrictions in any successor biological opinion to the salmonid biological  
22 opinion, applying the provisions of this section to those water supply restrictions where  
23 there are references to Actions IV.2.1 and IV.2.3.

24  
25 (c) Adjustments that shall be implemented. In making-receiving the recommendations under  
26 subsection (b), the Assistant Administrator shall evaluate the effects of the recommended  
27 adjustments on listed species and shall recommend to the Commissioner adjustments for  
28 which:

29  
30 1. the net effect on listed species is at worst equivalent to those of the underlying criteria,  
31 taking into account whatever actions or measures may be implemented in conjunction  
32 with the adjustments to mitigate its effects; and  
33 2. the effects of the adjustment fall within the incidental take authorizations.

34  
35  
36 (d) Taking into account offsetting species survival benefits from other measures.

37  
38 1. When examining opportunities to minimize or offset the potential adverse effect of  
39 adjustments to operating criteria as described in (b) and (c), the Commissioner and the  
40 Assistant Administrator shall take into account the potential salmonid survival  
41 improvements that are likely to result from other measures which, if implemented in  
42 conjunction with the adjustments, would offset the adverse effects of the adjustments.  
43 When considering offsetting mitigating measures, the Commissioner and the Assistant  
44 Administrator shall take into account consider the type, timing and nature of the adverse  
45 effects to specific species and ensure that the mitigation measures serve as offsets to

Commented [A20]: To make absolutely clear that we are not locking in any requirement regarding any specific operating criteria, we added a cross-reference to paragraph (5), discussed in our comment above.

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Commented [A21]: We deleted "minimize" here because that seemed to be covered by subsection (c), while this subsection seemed to focus on offsetting effects on species survival through other measures.

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those adverse effects provide equivalent overall benefits to the listed species in the aggregate.

2. The offsetting measures could include actions implemented with the support of a substantial contribution from water districts that would benefit from the adjustments.

(e) Framework for examining opportunities to minimize or offset the potential adverse effect of adjustments to operating criteria.—Not later than December 31, 2015, and every five years thereafter, the Assistant Administrator shall, in collaboration with the Director of the California Department of Fish and Wildlife, based on the best scientific and commercial data available and for each listed salmonid species, issue estimates of the increase in through-Delta survival the Secretary expects to be achieved—

(1) with export restrictions as specified by Action IV.2.3 as compared to limiting OMR flow to a fixed rate of 5000 cubic feet per second within the time period Action IV.2.3 is applicable, based on a given rate of San Joaquin River inflow to the Delta and holding other relevant factors constant;

(2) with San Joaquin River inflow to export restrictions specified within Action IV.2.1 as compared to the export restrictions in the April/May period imposed by the State Water Resources Control Board decision D-1641, based on a given rate of San Joaquin River inflow to the Delta and holding other relevant factors constant;

(3) by a trap and barge program based on the experience of other systems to the extent they are comparable, and the experience of other comparable systems and the study described in section 202, as that information becomes available;

(4) through physical habitat restoration improvements;

(5) through predation control programs;

(6) through temporary barriers, the Cross Channel Gates, and other projects affecting flow in the Delta;

(7) by salvaging entrained fish that may be entrained near the entrance to Clifton Court Forebay, if feasible; and

(8) by any other management measures that may provide equivalent or better benefits for listed species with improvements to water supplies.

(f) Survival estimates to be quantitative to the maximum extent feasible.

1) The Assistant Administrator shall make these estimates and determinations quantitatively to the maximum extent feasible, such as a range of percentage increases in through-Delta survival that could result from the management measures, and if the scientific information is lacking for quantitative estimates, shall do so on qualitative terms based

**Commented [A23]:** Pursuant to discussions with NOAA Fisheries on Monday, September 29, we revised this language to clarify that the agencies should consider the type, timing, and nature of adverse effects to specific species, but ensure that the alternative measures provided equivalent benefits to the listed species in the aggregate. Without this clarification, you could have an alternative measure that provided 105% of the benefits to one species and 95% of the benefits to another, and was therefore found not to be equivalent. Alternative measures might never line up perfectly in terms of having the exact same effects on every listed species.

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**Commented [A24]:** Technical edit to make clear that the experience of other systems need only be considered to the extent they are comparable.

**Commented [A25]:** "Comparable systems" should be identified, if used. There has been research in this, and survival down the San Joaquin is dismal compared to other systems, thus, may not be any comparable systems. Results of the trap and barge program should be compared to the situation without, and include survival and % straying.

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**Commented [A26]:** Technical edit to clarify that we are not talking about building fish screens or rescuing fish entrained in such screens, but instead salvaging fish entrained or stuck near the entrance to Clifton Court Forebay, where they may be eaten or otherwise not survive.

**Commented [A27]:** Please note "if feasible" addition. The screening of the forebay was evaluated and rejected a decade ago on feasibility grounds. We recommend undertaking a pilot program to evaluate the feasibility.

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upon the best available science.

- 2) If the Assistant Administrator provides qualitative estimates of the benefits to the species from one or more management measures, the Secretary shall, to the maximum extent feasible, rank the management measures described in paragraph (2) in terms of their most likely expected contribution to increased through-Delta survival ~~to specific species~~ relative to the other measures.

- 3) If at the time the Assistant Administrator conducts the analysis under subsection (b), the Secretary has not issued the estimates of increased through-Delta survival benefits from different management measures pursuant to subsection (e), the Secretary shall compare the benefits to the ~~specific~~ species from different management measures based on the best scientific and commercial data available at the time.

- (g) Comparison of adverse consequences for alternative management measures of equal benefit to the salmon.—

- (1) For the purposes of this subsection—

(A) The alternative management measure or combination of alternative management measures identified in paragraph (2) shall be known as the “equivalent alternative measure.”

(B) The existing measure or measures identified in subparagraphs (2)(A),(B),(C), or (D) shall be known as the “equivalent existing measure.”

(C) An “equivalent increase in through-Delta survival rates for listed salmonid species” shall mean an increase in through-Delta survival rates that is equivalent when considering the change in through-Delta survival rates for the listed salmonid species ~~on a species by species basis considered in the aggregate, and not necessarily the same change for each individual species, as long as the change in survival rates for all species remains consistent with the Endangered Species Act and implementing regulations, considered as a whole, and not necessarily the same change for each individual species.~~

- (2) As part of the reviews of operating criteria pursuant to subsection (b), the Assistant Administrator shall determine whether any alternative management measures or combination of alternative management measures listed in subsection (e)(3) through (8) would provide an increase in through-Delta survival rates for listed salmonid species that is equivalent to the increase in through-Delta survival rates for listed salmonid species from the following:

(A) with export restrictions as specified by Action IV.2.3, as compared to limiting OMR flow to a fixed rate of -5000 cubic feet per second within the time period Action IV.2.3 is applicable;

(B) with export restrictions as specified by Action IV.2.3, as compared to a modification of Action IV.2.3 that would provide additional water supplies, other than that described in subparagraph (A);

**Commented [A28]:** A fundamental principle of the ESA is that it is designed to protect specific listed species, subspecies or distinct population segments. We oppose the proposition of treating listed salmonids “as a whole”, and not on a species specific basis. Suggested edit.

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**Commented [A29]:** Consistent change with our edit to subsection (d)(1) of this section above, and accompanying comment. Add clarification that the change in survival rates for all species must remain consistent with the Endangered Species Act and implementing regulations.

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**Commented [A30]:** Please see above comments that “offsets” must be species specific and effects specific. NOAA recommends clarifying this specificity here and throughout to avoid confusion and litigation as to what constitutes “off-setting mitigation”.

**Commented [A31]:** Comment addressed above

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(C) with San Joaquin River inflow to export restrictions specified within Action IV.2.1, as compared to the export restrictions in the April/May period imposed by the State Water Resources Control Board decision D-1641, or

(D) with San Joaquin River inflow to export restrictions specified within Action IV.2.1, as compared to a modification of Action IV.2.1 that would provide additional water supplies, other than that described in subparagraph (C).

(3) If the Assistant Administrator identifies an equivalent alternative measure pursuant to paragraph (2), the Assistant Administrator shall determine whether

(A) it is technically feasible and within federal jurisdiction to implement the equivalent alternative measure, and

(B) the adverse consequences of doing so are less than the adverse consequences of the equivalent existing measure, including a concise evaluation of the adverse consequences to other affected interests.

(4) If the Assistant Administrator makes the findings in subparagraph (3)(A) and (B), the Assistant Administrator and the Commissioner shall adjust the operating criteria in the salmonid biological opinion pursuant to this subsection to implement the equivalent alternative measure in place of the equivalent existing measure in order to increase water supplies to the greatest extent possible while maintaining a net combined effect of equivalent through-Delta survival rates for the listed salmonid species.

(h) ~~Tracking incidental take levels~~ adverse effects beyond the range of effects accounted for in the biological opinion and coordinated operation with smelt biological opinion.

(1) Among the adjustments to the operational criteria considered through the adaptive management process under this section, the Assistant Administrator and the Commissioner shall

A) Evaluate the effect on through-Delta survival rates for listed salmonid species and water supply benefits of imposing part or all of the provisions of Actions IV.2.1 and IV.2.3 only in instances where necessary to do so in order to avoid exceeding the incidental take level for listed salmonid species range of effects from project operations over the remainder of the water year accounted for in the biological opinion; and

B) ~~Consider requiring that before some or all of the provisions of Actions IV.2.1. or IV.2.3 are imposed in any specific instance, the Assistant Administrator show that the implementation of these provisions in that specific instance is necessary to avoid~~ adverse effects exceeding the range of effects analyzed in the salmonid biological opinion ~~adverse effects to exceeding the incidental take level for listed salmonid species from project operations over the remainder of the water year.~~

(2) ~~Through tracking incidental take levels or some other mechanism, the Assistant Administrator, the Director and the Commissioner, in coordination with State officials as appropriate, shall consider establishing~~ operational criteria to coordinate

**Commented [A32]:** We respectfully oppose the use of the incidental take authorizations as the management objective for establishing or adjusting individual operating criteria, as is proposed here. The incidental take authorizations do not serve this purpose, and are expressed as much "coarser" levels of effects than are the individual operating criteria. We suggest "adverse effects" as a better standard.

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**Commented [A33]:** We revised subsection (h)(1) in response to the agencies' opposition to the concept of tracking incidental take levels as a management objective for adjusting individual operating criteria, and suggestion of "adverse effects" as a better standard.

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management of OMR flows under the smelt and salmonid biological opinions, in order to take advantage of opportunities to provide additional water supplies from the coordinated implementation of the biological opinions.

(i) Real-Time Monitoring and Management. The Assistant Administrator and the Commissioner shall, through the NMFS adaptive management salmonid biological opinion provisions, analyze whether date-certain triggers that limit OMR reverse flow to -5000 cubic feet per second could be adjusted to instead use real-time migration information on salmonids. If the analysis shows that the use of real-time information to trigger OMR flow limitations would improve water supply without causing significant adverse effects to Winter-run Chinook salmon, then such real-time management triggers shall be implemented.

**Commented [A34]:** Inserting this new subsection to answer the suggestion raised at the end of Section 202.

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## SEC. 204. PILOT PROGRAM TO PROTECT NATIVE ANADROMOUS FISH IN THE STANISLAUS RIVER.

(a) Establishment of Non-native Predator Fish Removal Program. The Assistant Administrator, in consultation with the United States Fish and Wildlife Service and the California Department of Fish and Wildlife, shall develop and conduct a pilot non-native predator fish removal program to remove non-native striped bass, smallmouth bass, largemouth bass, black bass, and other non-native predator fishes in and around the Bay Delta, including the Stanislaus River, contingent upon funding. The pilot program shall--

(1) be scientifically based;

(2) include methods to quantify the number and size of predator fishes removed each year, the impact of such removal on the overall abundance of predator fishes, and the impact of such removal on the populations of juvenile anadromous fish found in the Stanislaus River and elsewhere by, among other things, evaluating the number of juvenile anadromous fish that migrate past the rotary screw trap located at Caswell;

(3) among other methods, use wire fyke trapping, portable resistance board weirs, and boat electrofishing, which are among the most effective predator collection techniques that minimize effects to native anadromous fish;

(4) be developed, including the application for all necessary scientific research and species enhancement permits under section 10(a)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)), for the performance of the pilot program, not later than 6 months after the date of the enactment of this Act;

(5) be implemented on the first business day of the calendar year following the issuance of all necessary scientific research, and species enhancement permits, and funding needed to begin the pilot program; and

(6) be implemented for a period of seven consecutive calendar years.

(b) Management. The Assistant Administrator is authorized and encouraged to enter into agreements with interested local water districts to jointly develop, implement and evaluate this pilot program. Such parties shall work collaboratively to ensure the performance of the pilot program, and shall discuss and agree upon, among other things, changes in the structure,

**Commented [A35]:** The predator removal program should be conducted upstream of Caswell. That specificity should be stated somewhere. Maybe insert a new #2 to say, "on the Stanislaus River, be conducted upstream of the rotary screw trap at Caswell."

**Commented [A36]:** Representative Denham was the author of a modified version of this section that was in the House bill, and has agreed to changes to his original proposal that are reflected in the language of this section. We do not have any objection to the agencies proposed changes to section 204, but would suggest going over them with Denham's staff when we discuss this proposal with the House.



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management, personnel, techniques, strategy, data collection, reporting and conduct of the pilot program.

(c) Conduct.—

(1) IN GENERAL.— By agreement between the Assistant Administrator and the participating districts, the pilot program may be conducted by their own personnel, qualified private contractors hired by the districts, personnel of, on loan to, or otherwise assigned to NOAA Fisheries, or a combination thereof.

(2) PARTICIPATION BY NOAA FISHERIES.—In the event the districts elect to conduct the program using their own personnel or qualified private contractors hired by them, the Commissioner has the option to assign an employee of, on loan to, or otherwise assigned to NOAA Fisheries, to be present for all activities performed in the field. Such presence shall ensure compliance with the agreed upon elements specified in subsection (b). The districts shall pay 100 percent of the cost of such participation as specified in subsection (d).

(3) TIMING OF ELECTION.—The districts shall notify the Assistant Administrator of their election on or before October 15 of each calendar year of the pilot program, which election shall apply to the work performed in the subsequent calendar year.

(d) Funding.—

(1) ANNUAL FUNDING.—The Commissioner, the Assistant Administrator, and the participating districts shall develop a budget and funding plan for the pilot project that will allocate costs appropriately amongst the participating entities. On or before December 1 of each year of the pilot program, the Commissioner shall submit to the districts an estimate of the cost to be incurred by the Bureau of Reclamation in the following calendar year, if any, including the cost of any data collection and posting under subsection (e). If an amount equal to the estimate is not provided to the fund directed by the Assistant Administrator by the districts on or before December 31 of each year, (a) NOAA Fisheries shall have no obligation to conduct the pilot program activities otherwise scheduled, and (b) the districts shall be prohibited from conducting any aspect of the pilot program, until full payment is made by the districts.

(2) ACCOUNTING.—On or before September 1 of each calendar year, the Assistant Administrator shall provide an accounting of the prior calendar year's expenses to the participating entities. If the estimate paid by the districts was less than the actual costs incurred by NOAA Fisheries, the districts shall have until September 30 of that calendar year to pay the difference to the fund identified by the Assistant Administrator in subsection (d)(1). or NOAA Fisheries shall have no obligation to conduct the pilot program activities otherwise scheduled. If the estimate paid by the districts was greater than the actual costs incurred by NOAA Fisheries, then a credit shall be provided to the districts, which shall be deducted from the estimate payment the districts must make for the work performed by NOAA Fisheries, if any, in the next calendar year.

(e) Reporting and Evaluation.—

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(1) IN GENERAL.—On or before the 15th day of each month, the Assistant Administrator shall post on the website of NOAA Fisheries a tabular summary of the raw data collected in the prior month.

(2) REPORT.—On or before June 30 of the calendar year following the completion of the program, the Assistant Administrator and districts shall jointly submit a report for publication peer reviewed report that—

Commented [A37]: Publication timelines vary, should not set a deadline for peer reviewed report, but rather, submission of the report for peer review.

(A) discusses the findings and conclusions of the pilot program;

(B) synthesizes the data collected under paragraph (1); and

(C) makes recommendations for further study and action.

(f) Permits Process.—

(1) Not later than one year after filing of an application by the Assistant Administrator and the districts, the Secretary of the Interior, the Secretary of Commerce, or both, as appropriate, shall issue all necessary scientific research and species enhancement permits under section 10(a)(1) of the Endangered Species Act (16 U.S.C. 153(9)(a)(1)), for the performance of the pilot program.

(2) All permits issued shall be in the name of NOAA Fisheries and the participating districts.

(3) Districts may delegate the authority to administer the permit authority to any qualified private contractor retained in accordance with subsection (c).

(g) Emergency Environmental Reviews.—To expedite this environmentally beneficial program for the conservation of threatened and endangered species, the Secretary of the Interior shall consult with the Council on Environmental Quality in accordance with Section 1506.11 of title 40, Code of Federal Regulations (including successor regulations) to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 for this section.

(h) Definitions.—For the purposes of this section:

(1) COMMISSIONER.—The term 'Commissioner' means the Commissioner of the Bureau of Reclamation.

(2) DISTRICTS.—The term 'districts' means the Oakdale Irrigation District and the South San Joaquin Irrigation District.

(3) PILOT PROGRAM.—The term 'program' means the pilot non-native predator removal program established under this section.

(i) Sunset.—The authorities provided under this section shall expire seven years after the implementation of the pilot program.

SEC. 205. CALFED INVASIVE SPECIES PILOT PROJECTS  
IN THE SACRAMENTO-SAN JOAQUIN BAY DELTA AND  
ITS TRIBUTARIES.

(a) FINDINGS.—Congress finds that—

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(1) The Sacramento-San Joaquin Bay Delta and its Tributaries-

(A) is one of the largest and most diverse estuaries in the United States,

(B) is a natural treasure and a vital link in California's water system, and

(C) has native biodiversity important to the ecological and economic systems of California, including water deliveries to agriculture, municipalities and to the environment and fisheries industries, and

(D) has river tributaries important for rearing of salmon and steelhead smolts which experience a high level of predation from non-native species.

(2) Past, present and future introductions of invasive species are and will be a major factor in the decline of native pelagic and anadromous endangered or threatened species in the Sacramento-San Joaquin Bay Delta and its tributaries.

(3) More than 250 nonnative aquatic and plant species have been introduced into the Delta and its tributaries; of these, at least 185 species have become established and have altered the Sacramento-San Joaquin Bay Delta watershed's ecosystem.

(4) The Bay Delta Conservation Plan, the Recovery Plan for the Evolutionarily Significant Units of Sacramento River Winter-run Chinook Salmon and Central Valley Spring-run Chinook Salmon and the Distinct Population Segment of the Central Valley Steelhead, the Recovery Plan for the Sacramento-San Joaquin Delta Native Fishes, and the multiple 5 year reviews of those plans all highlight that introduced nonnative invasive species are a significant factor in the decline of native fish species. These nonnative species, which include invasive aquatic vegetation, predators, and competitors, directly or indirectly cause biological stress for pelagic and anadromous endangered or threatened fish species in the Sacramento-San Joaquin Bay-Delta and its tributaries.

(5) If threats by nonnative species to native fish species are not addressed, there is a high probability that native species of the Sacramento-San Joaquin Bay-Delta watershed's pelagic and anadromous community will go extinct.

(6) The CALFED legislation (Public Law 108-361) authorized a program to prevent, control, and eradicate invasive species, but it has not been implemented to date.

(7) A focused pilot program needs to be conducted within the Delta and river tributaries to reduce threats to native listed species by nonnative species. Reducing nonnative stressors on native listed species will contribute to both native listed species recovery and lowering the impact on downstream water users as those native listed species recover.

(b) PILOT PROJECTS TO IMPLEMENT CALFED INVASIVE SPECIES PROGRAM.

(1) Not later than January 1, 2016, the Secretary of the Interior, in collaboration with the Secretary of Commerce and the Director of the California Department of Fish and Wildlife, shall begin pilot projects to implement the invasive species program, including prevention, control and eradication authorized pursuant to Section 103(d)(6)(A)(iv) of Public Law 108-361. The pilot projects shall:

(A) seek to reduce invasive aquatic vegetation, predators, and other competitors which are major factors in the decline of native listed pelagic and anadromous species

**Commented [A38]:** We think this is speculation. Predation is an important stressor, but to say that nonnative species will cause pelagic and anadromous communities to go extinct is a pretty bold statement.

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that occupy the Sacramento and San Joaquin Rivers and their tributaries and the Sacramento-San Joaquin Bay-Delta; and

(B) address how to remove, reduce, or control the effects of species including: Asiatic clams, silversides, gobies, Brazilian water weed, largemouth bass, smallmouth bass, striped bass, crappie, bluegill, white and channel catfish, and brown bullheads.

(2) The Secretary of the Interior's efforts shall consist of the following phases:

(A) Phase 1. The Secretary of the Interior shall convene a panel of experts, including experts recommended by the State of California, to:

(i) Identify the non-native species having the greatest impact on the viability of native pelagic and anadromous native listed species; and

(ii) Identify the non-native species for which actions to reduce or control the population is determined to be possible; and

(iii) Design a study to reduce the non-native species identified in clauses (i) and (ii) and prepare a cost estimate to implement this study.

(B) Phase 2. The Secretary of the Interior shall test the general viability of nonnative reduction methods, including either direct predator removal or alteration of channel conditions, or some combination thereof, through pilot projects at multiple sites in addition to the projects on the Stanislaus River pursuant to Section 204, including known hotspots of predator aggregation or activity, such as:

(i) Clifton Court Forebay,

(ii) Central Valley Project intakes,

(iii) Head of Old River,

(iv) Georgiana Slough,

(v) Old and Middle Rivers,

(vi) Franks Tract,

(vii) Paintersville Bridge,

(viii) individual river tributaries important for wild populations of anadromous species listed as threatened or endangered under the Endangered Species Act of 1973,

(ix) Human-made submerged structures, and

(x) Salvage release sites.

(C) Phase 3. If it is feasible to do so, the Secretary of the Interior shall implement nonnative reduction methods at a larger number of sites, incorporating information learned during the first and second phase.

(3) The Secretary of the Interior shall collect data associated with the implementation of the projects above, and shall specifically collect data on the impact on

(A) pelagic and anadromous species listed as threatened or endangered under the Endangered Species Act of 1973,

**Commented [A39]:** Pursuant to conversations with NOAA Fisheries on Monday, September 29, we are awaiting feedback from NOAA Fisheries on whether the panel of experts referenced in the comment immediately below addresses the items outlined in clauses (i) through (iv) of subparagraph (A) in the proposed text.

**Commented [A40]:** Please note that there was already a predation workshop, and consider directing the review and implementation of its recommendations rather than duplicate another workshop.

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(B) water quality, and

(C) water supply.

(4) After assessing the data described in subparagraph (2), the Secretary of the Interior, in collaboration with the Secretary of Commerce and the Director of the California Department of Fish and Wildlife, shall, if appropriate, annually recommend revisions to the reasonable and prudent alternatives contained in the salmonid biological opinion and the biological opinion issued by the United States Fish and Wildlife Service on December 15, 2008, or other administrative federal requirements governing the operation of the Central Valley Project and the State Water Project, that are likely to produce additional fishery, water quality, and water supply benefits.

(c) IMPLEMENTATION. The Secretary of the Interior shall implement the CALFED program described in subpart (b) for at least a period of seven consecutive years beginning on the date of implementation.

(d) REPORTING REQUIREMENTS. The Secretary of the Interior shall provide reports to the Senate Committee on Environment and Public Works and the House Committee on Natural Resources on the following:

(1) No later than January 1, 2016, a description of the projects described in subpart (b), including the application for all necessary scientific research and species enhancement permits under section 10(a) (1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)), and for the performance of the CALFED invasive species Program.

(2) Upon the completion of Phase 1 as described in subsection (b)(1)(A), a report describing its implementation and cost effectiveness.

(3) Two years after the project begins, a report describing the progress of the eradication of the nonnative species in the Sacramento-San Joaquin Bay-Delta and its tributaries and how such efforts have helped the Recovery Plans for endangered and threatened Anadromous and Pelagic Species in the San Joaquin -Sacramento Bay-Delta watershed and the associated cost effectiveness of each control measure.

(4) After the pilot projects are complete, a report describing the results of the program, including recommendations on whether the program should be continued, how the program may be taken to full scale in the most cost effective manner, and how a mitigation program for the Central Valley Project allowable under section 10(a)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)) could be implemented.

(e) EMERGENCY ENVIRONMENTAL REVIEWS. To expedite this environmentally beneficial program for the conservation of threatened and endangered species, the Secretary of the Interior shall consult with the Council on Environmental Quality in accordance with section 1506.11 of title 40, Code of Federal Regulations (including successor regulations) to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 for this program.

## SEC. 206. MARK FISHERY AND HARVEST MANAGEMENT.

(a) In General.—To minimize the impact of harvest and project operations on salmonids,



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1 contribute to recovery of stocks of endangered or threatened species, improve management of  
2 fish stocks of both hatchery and natural origins, and to minimize risk of a natural origin fall  
3 Chinook listing under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), the  
4 Assistant Administrator shall—

5 ~~(1) In partnership with the Director of the California Department of Fish and Wildlife and~~  
6 ~~persons responsible for funding Central Valley hatcheries, convene an independent science panel~~  
7 ~~within 60 days of enactment of this Act to follow up on the 2012 California Hatchery Scientific~~  
8 ~~Review Group's recommendations by providing an assessment of costs and benefits associated~~  
9 ~~with marking, with tagging, and with a program that combines in some way marking and tagging~~  
10 ~~Central Valley hatchery produced fall Chinook, thoroughly review the scientific benefits, risks,~~  
11 ~~and costs associated with marking and tagging methods which would allow for identification of~~  
12 ~~hatchery origin fall Chinook. The Assistant Administrator shall ensure that the independent~~  
13 ~~science panel—~~

14 (A) Includes an appropriate number of scientific experts as determined and  
15 appointed by the Assistant Administrator, and an equal number of scientific experts  
16 selected by entities responsible for funding California salmon mitigation hatcheries;

17 (B) Considers and gives equal weight to both inland and ocean monitoring and  
18 management needs, including harvest.

19 (C) Completes the review by December 31, 2015.

20 ~~(2) Provide a report to the House Committee on Natural Resources and the Senate~~  
21 ~~Committee on Commerce, Science, and Transportation, within 60 days of the conclusion of~~  
22 ~~the review under Paragraph (1), that summarizes key findings and provides scientifically~~  
23 ~~supported recommendations on the best marking and tagging methods that would allow for~~  
24 ~~identification of hatchery origin fall Chinook.~~

25 ~~(3) Assess and implement harvest management strategies by October 1, 2018 to provide~~  
26 ~~better protection for sensitive Chinook stocks while still allowing for harvest of hatchery fall~~  
27 ~~Chinook.~~

28 ~~(A) In carrying out the assessment under this Paragraph, any alternative harvest~~  
29 ~~strategies assessed shall include stock specific quotas, daily landing limits, terminal~~  
30 ~~fisheries, and mark selective fisheries, all of which methods are standard practice for~~  
31 ~~Chinook harvest management in Oregon and Washington.~~

## 32 SEC. 207. NEW ACTIONS TO BENEFIT CENTRAL 33 VALLEY SALMONIDS.

34 Not later than March 1, 2016, under similar terms and conditions as successful United States  
35 Fish and Wildlife Service programs on Clear Creek and Battle Creek, the Director, in  
36 collaboration with the Director of the California Department of Fish and Wildlife, the  
37 Commissioner of the Bureau of Reclamation, or both, shall issue necessary permits and  
38 otherwise facilitate the deployment of temporary in-river structures—

39 (1) to protect and grow natural origin spring Chinook populations by blocking access to  
40 hatchery origin fall Chinook; and

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Commented [A41]: Please note that NOAA Fisheries and others convened the California Hatchery Scientific Review Group, which released a comprehensive set of recommendations on hatchery reforms, including expanded marking and tagging of hatchery releases. Respectfully recommend deletion of this section as redundant and not an important priority for addressing the 2015 drought. We remain totally open to exploring more aggressive implementation of the Cal. HSRG's recommendations with legislators and other interested parties.

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Commented [A42]: In discussion of the comment immediately above, NOAA Fisheries staff on Monday, September 29, 2014 indicated that it would be duplicative of the HSRG's 2012 recommendations to require another broad review, and suggested that we more specifically and narrowly request what we want assessed. Our core concern is that the HSRG did not assess the costs and benefits of marking versus tagging versus a program that combines the two in some way. Pursuant to NOAA Fisheries request, we have zeroed in on this specific assessment that we would like to see performed. We have also deleted the language in paragraphs (2) and (3) on follow-up actions, to make this revised language as focused as possible.

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Commented [A43]: Here is our response to the DOI question below on the intent of this section: The 2014 NMFS recovery plan indicates nine spring Chinook sub-populations within the Central Valley will be needed to achieve a viable, stable and recovered population. Competition and interbreeding between spring Chinook and fall Chinook is currently a major contributor to extinction risk for the spring Chinook salmon. Use of temporary structures to separate spring and fall Chinook salmon have been successful in Clear Creek and Battle Creek and have greatly benefitted spring Chinook in those tributaries. Section 207 calls for taking similar actions on other Central Valley tributaries to help establish new spring Chinook subpopulations in the Central Valley and to contribute to recovery of the species.

Commented [A44]: DOI still not clear on the intent of this section. Recommend offline discussion with bill author.

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(2) to prevent hatchery origin Chinook salmon and steelhead from reaching spawning grounds where the species will compete for spawning with natural origin fish listed under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

## TITLE III—OPERATIONAL FLEXIBILITY AND DROUGHT RELIEF

### SEC. 301. FINDINGS.

Congress finds that—

(1) Based on the congressional findings in Sec. 2 of this Act, it is appropriate and necessary for federal agencies to exercise the maximum amount of flexibility provided to them under the applicable laws and regulations to maximize delivery of water supplies while providing the same or better levels of protection for species.

### SEC. 302. DEFINITIONS.

In this title:

(1) CENTRAL VALLEY PROJECT.—The term “Central Valley Project” has the meaning given the term in section 3403 of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4707).

(2) KLAMATH PROJECT.—The term “Klamath Project” means the Bureau of Reclamation project in the States of California and Oregon, as authorized under the Act of June 17, 1902 (32 Stat. 388, chapter 1093).

(3) RECLAMATION PROJECT.—The term “Reclamation Project” means a project constructed pursuant to the authorities of the reclamation laws and whose facilities are wholly or partially located in the State.

(4) SECRETARIES.—The term “Secretaries” means—

- (A) the Administrator of the Environmental Protection Agency;
- (B) the Secretary of Agriculture;
- (C) the Secretary of Commerce; and
- (D) the Secretary of the Interior.

(5) STATE WATER PROJECT.—The term “State Water Project” means the water project described by California Water Code section 11550 et seq., and operated by the California Department of Water Resources.

### SEC. 303. OPERATIONAL FLEXIBILITY IN TIMES OF DROUGHT.

(a) Water Supplies.—

**Commented [A45]:** We recommend recasting Sec. 303 in the context of the development of a 2015 Drought Operations Plan as per earlier Administration recommendations. See text we have previously submitted at the end of this document “ALTERNATIVE SEC. 303”

**Commented [A46]:** We would prefer not to recast the body of section 303 in the form of a 2015 drought plan, both because we want this section to remain in effect for the duration of this drought (should it last beyond 2015), and for future droughts, and because we prefer the more specific direction in the existing section 303 to the more discretionary nature of the drought plan set forth in the proposed alternative section 303. We support, however, the agencies’ proposal to develop a 2015 drought plan, and have included a new subsection (f) to this section that endorses the agencies’ proposal to develop such a drought plan.

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(1) IN GENERAL.—In response to a declaration of a state of drought emergency by the Governor of California and for the period of time such a drought declaration remains in effect, the Secretaries shall provide the maximum quantity of water supplies practicable to Central Valley Project agricultural, municipal and industrial, and refuge service and repayment contractors, State Water Project contractors, and any other tribe, locality or municipality in the State, by approving, consistent with applicable laws (including regulations), projects and operations to provide additional water supplies as quickly as practicable based on available information to address the emergency conditions.

(2) APPLICATION.—Paragraph (1) applies to projects or operations involving the Klamath Project if the projects or operations would benefit Federal water contractors in the State.

(b) Administration.—In carrying out subsection (a), the Secretaries shall, consistent with applicable laws (including regulations)—

(1) issue all necessary permit decisions under the authority of the Secretaries not later than 30 days after the date on which the Secretaries receive a completed application from the State to place and use temporary barriers or operable gates in Delta channels to improve water quantity and quality for the State Water Project and the Central Valley Project south of Delta water contractors and other water users, on the condition that the barriers or operable gates—

(A) provide benefits for species protection and in-Delta water user water quality; and

(B) are designed so that formal consultations under section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) are not necessary;

(2) require the Director of the United States Fish and Wildlife Service and the Commissioner of Reclamation—

(A) to complete, not later than 30 days after the date on which the Director or the Commissioner receives a complete written request for water transfer associated with voluntarily fallowing nonpermanent crops in the State, all requirements under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) necessary to make final permit decisions on the request; and

(B) to grant any water transfer request described in subparagraph (A) to maximize the quantity of water supplies available for nonhabitat uses, on the condition that the fallowing and associated water transfer are in compliance with applicable Federal laws (including regulations);

(3) adopt a 1:1 inflow to export ratio for the increment of increased flow of the San Joaquin River, as measured as a 3-day running average at Vernalis during the period beginning on April 1, and ending on May 31, resulting from voluntary transfers and exchanges of water supplies, on the condition that a proposed transfer or exchange under this paragraph may only proceed if the Secretary of the Interior determines that the environmental effects of the proposed transfer or exchange are consistent with effects permissible under applicable law (including regulations), and Delta conditions are suitable

**Commented [A47]:** Please note that as a technical matter the 1:1 ratio under Action IV.2.1 pertains to a critically dry year, while other ratios are applicable to differing water year types. We note the directive to examine the broader application of the 1:1 ratio and implement it if consistent with permissible effects.

**Commented [A48]:** Comment noted



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to allow movement of the transfer water through the Delta consistent with Reclamation's permitted rights; and

(4) Provide additional priority for eligible WaterSMART projects that address drought conditions including projects that—

(A) provide emergency drinking and municipal water supplies to localities in a quantity necessary to meet minimum public health and safety needs;

(B) prevent the loss of permanent crops;

(C) minimize economic losses resulting from drought conditions; or

(D) provide innovative water conservation tools and technology for agriculture and urban water use that can have immediate water supply benefits.

(c) Accelerated Project Decision and Elevation.—

(1) IN GENERAL.— On request by the Governor of the State, the heads of Federal agencies shall use the expedited procedures under this subsection to make final decisions relating to a Federal project or operation if the project's or operation's purpose is to provide relief for emergency drought conditions pursuant to subsections (a) and (b).

(2) REQUEST FOR RESOLUTION.—

(A) IN GENERAL.—On request by the Governor of the State, the head of a Federal agency referenced in paragraph (1), or the head of another Federal agency responsible for carrying out a review of a project, as applicable, the Secretary of the Interior shall convene a final project decision meeting with the heads of all relevant Federal agencies to decide whether to approve a project to provide relief for emergency drought conditions.

(B) MEETING.—The Secretary of the Interior shall convene a meeting requested under subparagraph (A) not later than 7 days after the date on which the meeting request is received.

(3) NOTIFICATION.—On receipt of a request for a meeting under paragraph (2), the Secretary of the Interior shall notify the heads of all relevant Federal agencies of the request, including information on the project to be reviewed and the date of the meeting.

(4) DECISION.—Not later than 10 days after the date on which a meeting is requested under paragraph (2), the head of the relevant Federal agency shall issue a final decision on the project, subject to subsection (e)(2).

(5) MEETING CONVENED BY SECRETARY.—The Secretary of the Interior may convene a final project decision meeting under this subsection at any time, at the discretion of the Secretary, regardless of whether a meeting is requested under paragraph (2).

(d) Application.—To the extent that a Federal agency, other than the agencies headed by the Secretaries, has a role in approving projects described in subsections (a) and (b), this section shall apply to those Federal agencies.

(e) Limitation.—Nothing in this section authorizes the heads of applicable Federal agencies to approve projects—

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Commented [A49]: Cross-reference included to address agency comment immediately below

Commented [A50]: Please note that this may not be consistent with subsection (e)(2), below, which includes the ESA.

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(1) that would otherwise require congressional authorization; or

(2) without following procedures required by applicable law.

(f) 2015 Drought Plan. The Secretaries of Commerce and the Interior, in consultation with appropriate State officials, shall develop a drought operations plan for 2015 that is consistent with the provisions of this section and other provisions of this Act intended to provide additional water supplies that could be of assistance during the current drought.

## SEC. 304. OPERATION OF CROSS-CHANNEL GATES.

(a) In General.—The Secretary of Commerce and the Secretary of the Interior shall jointly—

(1) authorize and implement activities to ensure that the Delta Cross Channel Gates remain open to the maximum extent practicable using findings from the United States Geological Survey on diurnal behavior of juvenile salmonids, timed to maximize the peak flood tide period and provide water supply and water quality benefits for the duration of the drought emergency declaration of the State, consistent with operational criteria and monitoring criteria developed pursuant to the Order Approving a Temporary Urgency Change in License and Permit Terms in Response to Drought Conditions of the California State Water Resources Control Board, effective January 31, 2014 (or a successor order) and other authorizations associated with it;

(2) with respect to the operation of the Delta Cross Channel Gates described in paragraph (1), collect data on the impact of that operation on—

(A) species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(B) water quality; and

(C) water supply;

(3) consistent with knowledge gained from activities carried out during 2014, collaborate with the California Department of Water Resources to install a deflection barrier at Georgiana Slough in coordination with Delta Cross Channel Gate diurnal operations to protect migrating salmonids;

(4) evaluate the combined salmonid survival in light of activities carried out pursuant to paragraphs (1) through (3) in deciding how to operate the Delta Cross Channel gates to enhance salmonid survival and water supply benefits; and

(5) not later than May 15, 2015, submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives a written report on the extent to which the gates are able to remain open.

(b) Recommendations.—After assessing the information collected under subsection (a), the Secretary [of the Interior] shall recommend revisions to the operation of the Delta Cross-Channel Gates, to the Central Valley Project, and to the State Water Project, including, if appropriate, any reasonable and prudent alternatives contained in the biological opinion issued by the National Marine Fisheries Service on June 4, 2009, that are likely to produce fishery, water quality, and water supply benefits. The Secretary shall also coordinate with the State Water Resources

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Commented [A51]: New subsection included pursuant to comment at the top of section 303

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Commented [A52]: We are unclear if the operation described is physically feasible for DCC operation

Commented [A53]: NOAA provided specific operational criteria applicable to the DCC; hence the additional references as proposed.

Commented [A54]: We recommend verifying if this action is feasible. We are happy to work with bill authors offline to answer this question.

Commented [A56]: Please clarify that this might also require changes to D-1641 to implement

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Control Board to seek consistent direction for the operation of the Delta Cross-Channel Gates under federal and state law, including Water Right Decision 1641.

### SEC. 305. FLEXIBILITY FOR EXPORT/INFLOW RATIO.

In response to the declaration of a state of drought emergency by the Governor of California and for the period of time such a drought declaration remains in effect, consistent with the Central Valley Project and State Water Project Drought Operations Plan and Operational Forecast, the Commissioner of the Bureau of Reclamation shall continue to vary the averaging period of the Delta Export/Inflow ratio pursuant to the California State Water Resources Control Board decision D1641, approved in the March Temporary Urgency Change Order—

(1) to operate to a 35 percent Export/Inflow ratio with a 3 day averaging period on the rising limb of a Delta inflow hydrograph; and

(2) to operate to a 14 day averaging period on the falling limb of the Delta inflow hydrograph.

### SEC. 306. EMERGENCY ENVIRONMENTAL REVIEWS.

To minimize the time spent carrying out environmental reviews and to deliver water quickly that is needed to address emergency drought conditions in the State during the duration of an emergency drought declaration, the head of each applicable Federal agency shall, in carrying out this Act, consult with the Council on Environmental Quality in accordance with section 1506.11 of title 40, Code of Federal Regulations (including successor regulations), to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) during the emergency.

### SEC. 307. PRIORITIZING STATE REVOLVING FUNDS DURING DROUGHTS.

(a) In General.—This section shall apply for each of the fiscal years during which an emergency drought declaration of the State is in effect.

(b) The Administrator of the Environmental Protection Agency, in implementing the processes and programs under the State water pollution control revolving funds established under title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) and the State drinking water treatment revolving loan funds established under section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12), shall, for those projects that are eligible to receive assistance under section 603 of the Federal Water Pollution Control Act (33 U.S.C. 1383) or section 1452(a)(2) of the Safe Drinking Water Act (42 U.S.C. 300j–12(a)(2)),

(1) issue a determination of waivers within 30 days of the conclusion of the informal public comment period pursuant to section 436(c) of title IV of division G of Public Law 113–76; and

(2) authorize, at the request of the State, 40-year financing for assistance under section 603(d)(2) of the Federal Water Pollution Control Act (33 U.S.C. 1383(d)(2)) or section 1452(f)(2) of the Safe Drinking Water Act (42 U.S.C. 300j–12(f)(2)).

**Commented [A55]:** Sentence added in response to request for clarification in comment immediately above

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**Commented [A57]:** Rather than Gov, may want to consider tying the section to the designation of the end of the critical drought through reference to the relevant federal drought monitoring authority -- and not to a proclamation by the Governor -- in order to tie it to a factual circumstance and not to a policy decision by a state official.

**Commented [A58]:** We understand the comment, but would prefer to keep this language as it is, at least for the time being. One concern about tying measures to provide water supply flexibility solely to meteorological criteria is that the water supply shortages caused by this severe drought will last significantly longer than the period of lack of precipitation. For example, we understand that south-of-Delta agriculture water allocations for 2015 may well be zero even if 2015 is a normal year under governing hydrological classifications. The effectiveness period of the Governor's drought declaration may well take consideration of such significant relevant factors here; we are not clear how a trigger based solely on meteorological classifications could do so.

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(c) Effect of Section.—Nothing in this section authorizes the Administrator of the Environmental Protection Agency to modify any funding allocation, funding criteria, or other requirement relating to State water pollution control revolving funds established under title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) and the State drinking water treatment revolving loan funds established under section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12) for any other State.

## SEC. 308. INCREASED FLEXIBILITY FOR REGULAR PROJECT OPERATIONS.

The Secretaries shall, consistent with applicable laws (including regulations)—

(1) to the maximum extent practicable, based on the availability of water and without causing land subsidence or violating water quality standards—

(A) help meet the contract water supply needs of Central Valley Project refuges through the improvement or installation of water conservation measures, water conveyance facilities, and wells to use groundwater resources, on the condition that those activities may only be accomplished by using funding made available under the Water Assistance Program or the WaterSMART program of the Department of the Interior; and

(B) make available to Central Valley Project contractors a quantity of Central Valley Project surface water obtained from the activities carried out under subparagraph (A);

(2) contingent upon funding, in coordination with the Secretary of Agriculture, enter into an agreement with the National Academy of Sciences to conduct a comprehensive study, to be completed not later than 1 year after the date of enactment of this Act, on the effectiveness and environmental impacts of saltcedar biological control efforts on increasing water supplies and improving riparian habitats of the Colorado River and its principal tributaries, in the State and elsewhere;

(3) in coordination with the California Department of Water Resources and the California Department of Fish and Wildlife, implement offsite upstream projects in the Delta and upstream Sacramento River and San Joaquin basins that offset the effects on species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) due to activities carried out pursuant this Act, [as determined by the Secretaries];

(4) manage reverse flow in the Old and Middle Rivers as prescribed by the biological opinions issued by the United States Fish and Wildlife Service on December 15, 2008, for Delta smelt and by the National Marine Fisheries Service on June 4, 2009, for salmonids, or any successor biological opinions, to minimize water supply reductions for the Central Valley Project and the State Project, and issue guidance no later than December 31, 2015 directing their employees to take all steps necessary to manage flow in accordance with this paragraph;

(5) as soon as practicable after the date of enactment of this Act and pursuant to existing authority available to the Secretary of the Interior, participate in, issue grants, or otherwise provide funding for pilot projects to increase water in reservoirs in regional river basins



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experiencing extreme, exceptional, or sustained drought that have a direct impact on the water supply of the State, including the Colorado River Basin, on the condition that any participation, grant, or funding by the Secretary of the Interior with respect to the Upper Division shall be with or to the respective State; and

(6) use all available scientific tools to identify any changes to real-time operations of the Bureau of Reclamation, State, and local water projects that could result in the availability of additional water supplies.

## SEC. 309. TEMPORARY OPERATIONAL FLEXIBILITY FOR FIRST FEW STORMS OF 2014-2015 WATER YEAR.

### (a) Findings:

- (1) During the ~~2013~~-2014 water year, operations of the Central Valley Project and the State Water Project, the incidental take of adult Delta smelt was zero; of juvenile Delta smelt, 78 (7.7% of the incidental take limit); of winter run chinook, 339 (1.4% of the incidental take limit); ~~of spring run chinook, zero;~~ and of steelhead, 261 (8.7% of the incidental take limit).
- (2) The Central Valley Project and State Water Project exceeded a Old and Middle River flow combined pumping capacity of -5,000 cubic feet per second over a 14-day average for brief periods after three storm events in February and March 2014, as a result of increased pumping, but did not cause substantially increased take of smelt or salmon.
- (3) Hydrological conditions in dry years, such as the ~~2013~~-2014 water year, have not triggered water pumping restrictions pursuant to the 2008 smelt biological opinion.
- (4) The Secretaries should be allowed more flexibility to increase pumping levels without causing significant risk to the listed species or weakening other environmental protections.
- (5) Given California's severe drought conditions, significant groundwater withdrawals for irrigation due to lack of surface water supplies, and the depletion of water supplies in reservoirs, it is imperative that the Secretaries exercise the flexibility provided herein to capture the maximum amount of storm flows when and if they occur in the ~~2014~~-2015 water year, and provide for the diversion of those supplies to the Central Valley Project and State Water Project so that farms, businesses, and homes in drought-stricken areas will have an opportunity to bolster their meager supplies when water is available.

(b) In general. Consistent with avoiding additional significant adverse effects upon take of listed fish beyond those currently authorized under the ESA, likely to result in exceeding the incidental take level in the biological opinions and other environmental protections under subsection (e), the Secretaries shall authorize the Central Valley Project and the State Water Project, combined, to operate at levels that result in Old and Middle River flows at up to -7500 cubic feet per second (based on USGS gages on Old and Middle rivers) daily average for up to 21 - even cumulative days after October 1, 2014, as described in subsection (c).

(c) Days of temporary operational flexibility. The temporary operational flexibility described in subsection (b) shall be authorized on days that the California Department of Water Resources determines the daily average river flow of the Sacramento River is at, or above, 17,000 cubic feet

**Commented [A59]:** We have not at the time of these comments been able to verify whether these findings are accurate and note the use of surrogates to estimate salvage and loss of listed spring-run at the pumps. We reserve the opportunity to provide additional data and modifications to the language to accurately describe the effects of 2014 operations as those data are analyzed and refined.

**Commented [A60]:** We believe that there should be some degree of significance or importance of the adverse effects on the listed fish if those effects are going to prevent the agencies from moving water that is desperately needed during the drought crisis. We suggest the word "significant," but we are open to different wording that reflects the same concept.

**Commented [A61]:** We recommend striking the word currently because it doesn't add anything to the effect of the provision and creates an unnecessary ambiguity as to what might be currently authorized by the ESA today.

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**Commented [A62]:** Please note the change in language to "adverse effects beyond those currently authorized under the ESA" and "up to" 21 cumulative days. These changes are important to maintain Agency operational flexibility and avoid potential litigation.

**Commented [A63]:** Please note that first flush flows over 14,000 cfs at Wilkins Slough have been observed to trigger emigration of winter-run, so that the timing of increased exports with more negative OMR may coincide with higher emigration of and effects to winter-run. The agencies are actively evaluating the ability to implement adjustments to negative OMR criteria to enhance early spring water deliveries thru the deployment of real time monitoring capabilities, and will implement such adjustments thru the 2015 Drought Operations Plan.

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per second as measured at the Sacramento River at Freeport gauge maintained by the United States Geologic Survey.

(d) Compliance with ESA incidental take authorizations. In carrying out this section, the Secretaries may continue to impose any requirements under the biological opinions during any period of temporary operational flexibility as they if they determine may be are reasonably necessary to avoid undue significant additional adverse effects over and above exceeding those authorized under the ESA that otherwise project operations over the remainder of the water year would exceed the incidental take authorizations in the biological opinions.

(e) Other environmental protections.

- (1) The Secretaries' actions under this section shall be consistent with applicable regulatory requirements under state law, including State Water Resources Control Board Decision 1641, as it may be implemented in any given year;
- (2) During the first flush of sediment out the Delta during the 2014-2015 water year, OMR flow may be managed at rates less negative than -5000 cubic feet per second for a minimum duration to avoid movement of adult delta smelt (*Hypomesus transpacificus*) to areas in the southern Delta that would be likely to increase entrainment at Central Valley Project and State Water Project pumping plants;
- (3) This section shall not have any effect on the applicable requirements of the salmonid biological opinion from April 1 to May 31, unless the Secretary of Commerce finds that some or all of such applicable requirements may be adjusted relaxed during this time period to provide emergency water supply relief without resulting in additional adverse effects beyond those authorized under the ESA, exceeding the incidental take level;
- (4) During operations under this section, the Commissioner of Reclamation, in coordination with the Fish and Wildlife Service, National Marine Fisheries Service, and California Department of Fish and Wildlife, shall undertake a monitoring program and other data gathering to insure take limits levels are not exceeded, and to identify potential negative impacts and actions necessary to mitigate any impacts of the temporary operational flexibility to species listed as threatened or endangered under the Endangered Species Act, 16 U.S.C. 1531-1544; and
- (5) The Commissioner is authorized to take any action, including the transfer of appropriated funds between accounts that, in the Commissioner's judgment, are necessary to mitigate the impacts of such operations as long as any such mitigation is consistent with the requirements of this section.

(f) Technical adjustments to target period. If, before temporary operational flexibility has been implemented on 21 cumulative days, the Secretaries operate the Central Valley Project and the State Water Project combined at levels that result in Old and Middle River flows less negative than -7500 cubic feet per second during days of temporary operational flexibility as defined in subsection (c), the duration of such operation shall not be counted toward the 21 cumulative days specified in subsection (b).

(g) Emergency consultation; effect on running averages.

- 1) If necessary to implement the provisions of this section, the Commissioner shall use the emergency consultation procedures under the Endangered Species Act and its implementing regulation at 50 CFR 402.05 to temporarily adjust the operating criteria

**Commented [A64]:** Please note the recommended modifications to the operative standard: the incidental take authorizations do not function as biological objectives for specific operating criteria and were not designed to do so.

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**Commented [A65]:** "May be necessary" is a very weak standard and suggests speculation of effects could be enough. "Are reasonably necessary" seems a reasonable standard to us.

**Commented [A66]:** "Undue" is a vague word. We suggest "significant" per the comment above.

**Commented [A67]:** Suggest "exceeding" as a technical edit to "over and above"

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**Commented [A68]:** The incidental take limits are not meant to operate to.

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under the biological opinions, solely for the 21 days of temporary operational flexibility—

A) no more than necessary to achieve the purposes of this section consistent with the environmental protections in subsections (d) and (e); and

B) including, as appropriate, adjustments to ensure that the actual flow rates during the periods of temporary operational flexibility do not count toward the 5-day and 14-day running averages of tidally filtered daily Old and Middle River flow requirements under the biological opinions.

2) Following the conclusion of the 21 days of temporary operational flexibility, the Commissioner shall not ~~need to~~ reinitiate consultation on these adjusted operations on the biological opinions if the effects on listed species of these operations under this section remain within the range of those those currently authorized under the Endangered Species Act, ~~e incidental take authorizations~~.

Commented [A69]: Please note recommended changes.

Commented [A70]: Suggest deleting "currently" as discussed in comment above

(h) Level of detail required for analysis. In articulating the determinations required under this section, the Secretaries shall fully satisfy the requirements herein but shall not be expected to provide a greater level of supporting detail for the analysis than feasible to provide within the short time frame permitted for timely decision-making in response to changing conditions in the Delta.

(i) Duration. This section shall expire on September 30, 2015.

## SEC. 310. EXPEDITING WATER TRANSFERS.

(a) In General.—Section 3405(a) of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4709(a)) is amended—

(1) by redesignating paragraphs (1) through (3) as paragraphs (4) through (6), respectively;

(2) in the matter preceding paragraph (4) (as so designated)—

(A) in the first sentence, by striking “In order to” and inserting the following:

“(1) IN GENERAL.—In order to”; and

(B) in the second sentence, by striking “Except as provided herein” and inserting the following:

“(3) TERMS.—Except as otherwise provided in this section”; and

(3) by inserting before paragraph (3) (as so designated) the following:

“(2) EXPEDITED TRANSFER OF WATER.—The Secretary shall take all necessary actions to facilitate and expedite transfers of Central Valley Project water in accordance with—

“(A) this Act;

“(B) any other applicable provision of the reclamation laws; and

“(C) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).”;

(4) in paragraph (4) (as so designated)—

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(A) in subparagraph (A), by striking “to combination” and inserting “or combination”; and

(B) by striking “3405(a)(2) of this title” each place it appears and inserting “(5)”;  
(5) in paragraph (5) (as so designated), by adding at the end the following:

“(E) The contracting district from which the water is coming, the agency, or the Secretary shall determine if a written transfer proposal is complete within 45 days after the date of submission of the proposal. If the contracting district or agency or the Secretary determines that the proposal is incomplete, the district or agency or the Secretary shall state with specificity what must be added to or revised for the proposal to be complete.”; and

(6) in paragraph (6) (as so designated), by striking “3405(a)(1)(A)-(C), (E), (G), (H), (I), (L), and (M) of this title” and inserting “(A) through (C), (E), (G), (H), (I), (L), and (M) of paragraph (4)”.

(b) Conforming Amendments.—The Central Valley Project Improvement Act (Public Law 102–575) is amended—

(1) in section 3407(c)(1) (106 Stat. 4726), by striking “3405(a)(1)(C)” and inserting “3405(a)(4)(C)”; and

(2) in section 3408(i)(1) (106 Stat. 4729), by striking “3405(a)(1) (A) and (J) of this title” and inserting “subparagraphs (A) and (J) of section 3405(a)(4)”

## SEC. 311. WARREN ACT CONTRACTS.

[To be supplied.]

## SEC. 312. ADDITIONAL WARREN ACT CONTRACTS.

[To be supplied.]

**Commented [A71]:** Language was not provided and the Administration takes no position on these sections.

## TITLE IV—INCREASING WATER STORAGE

### SEC. 401. FINDINGS.

Congress finds that—

(1) the record drought conditions being experienced in the State as of the date of enactment of this Act are—

(A) expected to recur in the future; and

(B) likely to do so with increasing frequency;

(2) water storage is an indispensable and integral part of any solution to address the long-term water challenges of the State;

(3) Congress authorized relevant feasibility studies for 4 water storage projects in the



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State, including projects for—

(A) enlargement of Shasta Dam in Shasta County under section 2(a) of Public Law 96–375 (94 Stat. 1506), as reaffirmed under section 103(d)(1)(A)(i)(I) of Public Law 108–361 (118 Stat. 1684);

(B) enlargement of Los Vaqueros Reservoir in Contra Costa County under section 215 of Public Law 108–7 (117 Stat. 147), as reaffirmed under section 103(d)(1)(A)(i)(II) of Public Law 108–361 (118 Stat. 1684);

(C) construction of North-of-Delta Offstream Storage (Sites Reservoir) in Colusa County under section 215 of Public Law 108–7 (117 Stat. 147), as reaffirmed under section 103(d)(1)(A)(ii)(I) of Public Law 108–361 (118 Stat. 1684); and

(D) construction of the Upper San Joaquin River storage (Temperance Flat) in Fresno and Madera Counties under section 215 of Public Law 108–7 (117 Stat. 147), as reaffirmed under section 103(d)(1)(A)(ii)(II) of Public Law 108–361 (118 Stat. 1684);

(4)(A) as of the date of enactment of this Act, it has been more than 10 years since the authorization of the feasibility studies referred to in paragraph (3); but

(B) complete and final feasibility studies have not been prepared for any of those water storage projects;

(5) as of August 2014, only 2 of the 4 projects referred to in paragraph (3) have completed draft feasibility studies;

(6) the slow pace of work on completion of the feasibility studies for those 4 water storage projects is—

(A) unjustified; and

(B) of deep concern; and

(7) there is significant public interest in, and urgency with respect to, completing all feasibility studies and environmental reviews for the water storage projects referred to in paragraph (3), given the critical need for that infrastructure to address the water challenges of the State.

## SEC. 402. CALFED STORAGE FEASIBILITY STUDIES.

(a) In General.—Notwithstanding subparagraph (B)(i) of section 103(d)(1) of Public Law 108–361 (118 Stat. 1684), the Secretary of the Interior, acting through the Commissioner of Reclamation (referred to in this title as the “Secretary”), shall complete a final feasibility study and any other applicable environmental review documents for the project described in—

(1) subparagraph (A)(i)(I) of that section by not later than December 31, 2014;

(2) subparagraph (A)(ii)(II) of that section by not later than July 31, 2015.

(b) Environmental Reviews.—In carrying out subsection (a), the Secretary—

(1) shall ensure that—

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(A) all applicable reviews, including reviews required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), are completed as expeditiously as practicable; and

(B) the shortest applicable process under that Act is used, including in the completion of—

(i) feasibility studies;

(ii) draft environmental impact statements; and

(iii) final environmental impact statements; and

(2) shall not be required to complete a draft or final environmental impact statement if the Commissioner of Reclamation determines, and the Secretary concurs, that the project fails to meet applicable Federal cost-benefit requirements or standards.

(c) Accountability.—

(1) If the Bureau of Reclamation determines that an environmental review document for the water storage projects referenced in of Section 103(d)(1) of P.L. 108-361 will not be completed according to the schedule specified in subsection (a), the Bureau shall notify the Senate Committee on Energy and Natural Resources, the Senate Appropriations Subcommittee on Energy and Water Development, and the House of Representatives Transportation and Infrastructure Committee within 14 days of the determination. The notification shall include:

(A) An explanation of the delay;

(B) The anticipated length of the delay and the revised completion date;

(C) The steps that the Bureau will take to mitigate the delay, including, but not limited to, a request to reprogram existing funds appropriated to the Bureau to meet the revised completion deadline.

(b) The Bureau of Reclamation shall carry out the procedures in subsection (a) for each subsequent delay beyond the revised completion deadline.

## SEC. 403. WATER STORAGE PROJECT CONSTRUCTION.

(a) The Secretary, acting through the Commissioner of the Bureau of Reclamation, may partner or enter into an agreement on the water storage projects identified in section 103(d)(1) of the Water Supply Reliability and Environmental Improvement Act (Public Law 108-361) (and Acts supplemental and amendatory to the Act) with local joint powers authorities formed pursuant to State law by irrigation districts and other local water districts and local governments within the applicable hydrologic region, to advance those projects.

(b) [PLACEHOLDER FOR AUTHORIZATION ISSUE]

## SEC. 404. OTHER STORAGE FEASIBILITY STUDIES.

(a) Definition of Qualifying Project.—In this section, the term “qualifying project” means new surface water storage projects constructed on lands administered by the Department of the Interior in a State in which the Bureau of Reclamation has jurisdiction, exclusive of any

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easement, right-of-way, lease, or any private holding.

(b) Lead Agency.—

(1) QUALIFYING PROJECTS WITHIN JURISDICTION OF BUREAU OF RECLAMATION.—The Bureau of Reclamation shall serve as the lead agency for purposes of coordinating all reviews, analyses, opinions, statements, permits, licenses, and other approvals or decisions required under Federal law (including regulations) to construct qualifying projects within the jurisdiction of the Bureau.

(2) QUALIFYING PROJECTS OUTSIDE JURISDICTION OF BUREAU OF RECLAMATION.—If the site of a qualifying project is not located in a State in which the Bureau of Reclamation has jurisdiction, the Secretary shall, by not later than 45 days after the date of receipt of an application for the qualifying project—

(A) designate an alternate agency within the Department of the Interior to serve as the lead agency for purposes of coordinating all reviews, analyses, opinions, statements, permits, licenses, and other approvals or decisions required under Federal law (including regulations) to construct the qualifying project; or

(B) in consultation with the heads of other Federal departments and agencies, identify the appropriate lead agency for the qualifying project.

(c) Cooperating Agencies.—

(1) FEDERAL DEPARTMENTS AND AGENCIES.—The lead agency designated under paragraph (1) or (2) of subsection (b) shall—

(A) as soon as practicable after receipt of an application for a qualifying project, identify any Federal department or agency that may have jurisdiction over a review, permit, license, approval, or decision required for the qualifying project under applicable Federal laws (including regulations); and

(B) as soon as practicable after the date of identification under subparagraph (A)—

(i) notify each applicable department or agency of the identification; and

(ii) designate the department or agency as a cooperating agency, unless the department or agency—

(I) has no jurisdiction or authority with respect to the qualifying project;

(II) has no expertise or information relevant to the qualifying project or any review, permit, license, approval, or decision associated with the qualifying project; or

(III) does not intend—

(aa) to submit comments regarding the qualifying project; or

(bb) to conduct any review of the qualifying project or make any decision with respect to the qualifying project in a manner other than in cooperation with the Bureau of Reclamation.

(2) STATES.—A State in which a qualifying project is proposed to be carried out may

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elect, consistent with Federal and State law, to participate as a cooperating agency, if the lead agency designated for the proposed qualifying project under paragraph (1) or (2) of subsection (b) determines that the applicable agency of the State—

(A) has jurisdiction over the qualifying project under applicable Federal or State law;

(B) is required to conduct or issue a review of the qualifying project; and

(C) is required to make a determination regarding issuing a permit, license, or approval of the qualifying project.

(d) Duties of Lead Agency.—

(1) IN GENERAL.—Not later than 30 days after the date of receipt of an application for approval of a qualifying project, the lead agency shall hold a meeting among the applicant, the lead agency, and all cooperating agencies to establish, with respect to the qualifying project, all applicable—

(A) requirements;

(B) review processes; and

(C) stakeholder responsibilities.

(2) SCHEDULE.—

(A) ESTABLISHMENT.—Not later than 30 days after the date of the meeting under paragraph (1), the lead agency, in consultation with the attendees of the meeting, shall establish a schedule for completion of the qualifying project, taking into consideration, among other relevant factors—

(i) the responsibilities of cooperating agencies under applicable laws and regulations;

(ii) the resources available to the cooperating agencies and non-Federal project stakeholders;

(iii) the overall size and complexity of the qualifying project;

(iv) the overall schedule for, and cost of, the qualifying project; and

(v) the sensitivity of the natural and historic resources that may be affected by the qualifying project.

(B) REQUIREMENTS.—On establishment of a schedule for a qualifying project under subparagraph (A), the lead and cooperating agencies shall—

(i) to the maximum extent practicable, adhere to the schedule; and

(ii) submit to the Committee on Environment and Public Works of the Senate and the Committee on Natural Resources of the House of Representatives on a semiannual basis a report describing any delays in the schedule, including a description of—

(I) the reasons for the delay;

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(II) the actions that the lead and cooperating agencies will take to minimize the delay; and

(III) a revised schedule for the qualifying project, if applicable.

(e) Environmental Reviews.—

(1) SINGLE, UNIFIED ENVIRONMENTAL REVIEW DOCUMENT.—

(A) IN GENERAL.—The lead agency with respect to a qualifying project, in consultation with appropriate stakeholders and cooperating agencies, shall determine whether a single, unified environmental review document relating to the qualifying project is sufficient to comply with applicable Federal laws (including regulations), including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(B) ACTION ON DECLINATION.—If, after consultation under subparagraph (A), a lead agency determines not to adopt a single, unified environmental review document relating to a qualifying project—

(i) the lead agency shall—

(I) document the reasons for the determination; and

(II) submit to the Secretary a report describing those reasons; and

(ii) the Secretary may require the adoption of a single, unified document at the discretion of the Secretary, based on good cause.

(2) ENVIRONMENTAL ASSESSMENT.—Except as provided under paragraph (4), if the lead agency with respect to a qualifying project, in consultation with cooperating agencies, determines that an environmental assessment is sufficient to comply with the requirements of this subsection and other applicable Federal laws (including regulations)—

(A) the public comment period for a draft environmental assessment shall be no more than 60 days after publication in the Federal Register of notice of the public issuance of that draft; and

(B) the lead agency shall issue the final environmental assessment by not later than 180 days after the end of the period for public comments on the draft environmental assessment.

(3) ENVIRONMENTAL IMPACT STATEMENT.— Except as provided under paragraph (4), if the lead agency with respect to a qualifying project, in consultation with cooperating agencies, determines that an environmental impact statement is required to comply with the requirements of this subsection and other applicable Federal laws (including regulations)—

(A) the public comment period for a draft environmental impact statement shall be no more than 60 days after publication in the Federal Register of notice of the public issuance of that draft; and

(B) the lead agency shall issue the final environmental impact statement by not later than 1 year after the end of the period for public comments on the draft environmental impact statement.



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(4) MODIFICATION OF SCHEDULE.—In carrying out paragraphs (2) and (3),

(A) the lead agency with respect to a qualifying project may modify the schedule of the qualifying project if:

(i) the Federal lead agency can demonstrate good cause, such as the need for additional time to comply with other statutory or regulatory requirements other than the National Environmental Policy Act of 1969, and the head of that agency submits to Congress a written determination describing the cause and reasons for the modification no less than 30 days before the original scheduled deadline; or

(ii) the Federal lead agency, the project sponsor, the joint lead agency (as applicable), and all participating and cooperating agencies agree to such modification.

(B) no modification pursuant to subparagraph (4)(A) shall postpone the issuance of a final environmental assessment by more than 1 year, or a final environmental impact statement by more than 2 years, unless the conditions under (4)(A)(i) or (4)(A)(ii) are met.

(C) If a modification occurs pursuant to this paragraph, the Federal lead agency shall issue and adhere to the revised schedule unless the conditions under (4)(A)(i) or (4)(A)(ii) are met.

(5) REQUIREMENTS.—On commencement of the environmental review process under this subsection, the lead and cooperating agencies shall, as soon as practicable—

(A) make available to all stakeholders of the qualifying project information regarding—

(i) the environmental and socioeconomic resources located within the area of the qualifying project; and

(ii) the general locations of the alternatives under consideration; and

(B) identify any issues of concern regarding the potential environmental or socioeconomic effects of the qualifying project, including any issues that could substantially delay or prevent an agency from granting a permit or other approval that is needed for a study relating to the qualifying project.

(f) Concurrent Review Actions.—

(1) IN GENERAL.—Any review, analysis, permit, license, approval, or decision regarding a qualifying project made by a Federal, State, or local government agency shall be—

(A) conducted, to the maximum extent practicable, concurrently with any other applicable government agency; and

(B) incorporated in the schedule for the qualifying project under subsection (d)(2).

(2) REQUIREMENT.—The lead and cooperating agencies for a qualifying project shall formulate and implement administrative, policy, and procedural mechanisms to enable adherence to the schedule for the qualifying project in a timely, coordinated, and environmentally responsible manner.

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(3) GUIDANCE.—The Secretary shall issue guidance regarding the use of programmatic approaches to carry out the environmental review process that, to the maximum extent practicable—

(A) eliminates repetitive discussions of the same issues;

(B) focuses on the actual issues ripe for analysis at each level of review;

(C) establishes a formal process for coordinating with participating and cooperating agencies, including the establishment of a list of all data required to carry out an environmental review process; and

(D) complies with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and all other applicable laws and regulations.

(g) Administrative Record and Data Management.—

(1) IN GENERAL.—The lead agency shall—

(A) be responsible for compiling the administrative record of the information used as the basis for decisions relating to a qualifying project; and

(B) to the maximum extent practicable and consistent with Federal law, make available all data regarding the qualifying project in a format that is accessible via electronic means for project stakeholders, cooperating agencies, and the public.

(2) REPORTS.—Not less frequently than once each year, the lead agency shall submit a progress report regarding a qualifying project to project stakeholders, cooperating agencies, the Committee on Environment and Public Works of the Senate, and the Committee on Natural Resources of the House of Representatives.

(h) Participation by Non-Federal Project Sponsors.—

(1) APPLICATION TO SERVE AS COOPERATING AGENCY.—A non-Federal sponsor of a qualifying project may submit to the lead Secretary an application to serve as a cooperating agency of the qualifying project for purposes of preparing any necessary documents relating to the qualifying project, including an environmental review, if—

(A) the non-Federal sponsor is a public agency as defined under the laws of the state in which the agency is located;

(B) the non-Federal sponsor agrees to adhere to—

(i) all required Federal laws (including regulations) in carrying out the qualifying project; and

(ii) all decisions regarding the qualifying project that have been agreed on by other stakeholders of the qualifying project; and

(C) the applicable lead agency certifies that participation by the non-Federal sponsor will not inappropriately bias the qualifying project in favor of the non-Federal sponsor.

(2) FUNDS.—Any funds contributed by a non-Federal sponsor to a qualifying project—

(A) may be accepted to maintain or accelerate progress on the qualifying project,

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subject to the condition that the Secretary shall—

(i) review the use of the funds; and

(ii) certify in writing that the funds—

(I) are used solely to complete applicable environmental reviews; and

(II) do not unduly influence any permit or approval decision regarding the qualifying project; and

(B) shall be applied toward the non-Federal cost-share of the qualifying project.

(i) Applicability to Calfed Storage Studies.—For any feasibility study referred to in section 401(3), this section shall apply to all activities to be carried out under the study on or after the date of enactment of this Act that would lead to congressional authorization of an applicable project for construction.

## SEC. 405. DAM SAFETY PROJECTS WITH INCREASED STORAGE COMPONENT.

(a) Additional Project Benefits.—The Reclamation Safety of Dams Act of 1978 is amended—

(1) in section 3 (43 U.S.C. 507), by striking “Construction” and inserting “Except as provided in section 5B, construction”; and

(2) by inserting after section 5A (43 U.S.C. 509a) the following:

### “SEC. 5B. ADDITIONAL PROJECT BENEFITS.

“(a) In General.—Notwithstanding section 3, if the Secretary, in the judgment of the Secretary, makes a determination described in subsection (b), the Secretary is authorized to develop any additional project benefit—

“(1) through the construction of new or supplementary works on a project in conjunction with the activities carried out by the Secretary pursuant to section 2; and

“(2) subject to the conditions described in the feasibility study relating to the project.

“(b) Description of Determination.—A determination referred to in subsection (a) is a determination by the Secretary that—

“(1) an additional project benefit, including but not limited to additional conservation storage capacity, is—

“(A) necessary; and

“(B) in the interests of the United States; and

“(2) the project [benefit] proposed to be carried out is—

“(A) feasible; and

“(B) not inconsistent with the purposes of this Act.

“(c) Requirements.—The costs associated with developing an additional project benefit under

**Commented [A72]:** The Administration has concerns with amending the Safety of Dams Act. See suggested technical assistance below.

this section shall be—

“(1) allocated to the authorized purposes of the structure, provided that agreement on project benefits and allocable costs is reached among state and federal funding agencies entity or entities benefitting from the additional conservation storage capacity, subject to agreement between the state and federal funding agencies on such allocations; and

“(2) repaid in accordance with all applicable provisions of Federal reclamation law (the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act (43 U.S.C. 371 et seq.).”.

(b) San Luis Reservoir Expansion.—Section 103(f)(1)(A) of Public Law 108–361 (118 Stat. 1694) is amended—

(1) by striking “Funds” and inserting the following:

“(i) IN GENERAL.—Funds”; and

(2) by adding at the end the following:

“(ii) ENVIRONMENTAL REVIEWS AND FEASIBILITY STUDY.—The Commissioner of Reclamation shall submit [to Congress]—

“(I) an expansion draft environmental impact statement and feasibility study relating to the San Luis Reservoir by not later than April 1, 2016; and

“(II) a final environmental impact statement relating to the San Luis Reservoir by not later than December 31, 2016.”.

## SEC. 406. UPDATING WATER OPERATIONS MANUALS FOR NON-FEDERAL PROJECTS.

(a) Definitions.—In this section:

(1) NON-FEDERAL PROJECT.—

(A) IN GENERAL.—The term “non-Federal project” means a non-Federal reservoir project operated for flood control in accordance with rules prescribed by the Secretary pursuant to section 7 of the Act of December 22, 1944 (commonly known as the “Flood Control Act of 1944”) (58 Stat. 890, chapter 665).

(B) EXCLUSION.—The term “non-Federal project” does not include any dam or reservoir owned by—

(i) the Bureau of Reclamation; or

(ii) the Corps of Engineers.

(2) OWNER.—The term “owner” with respect to a non-Federal project, does not include—

(A) the Secretary;

(B) the Secretary of the Interior; or

(C) the head of any other Federal department or agency, notwithstanding any

**Commented [A73]:** Allocating the costs of additional storage benefits among all authorized purposes potentially has the taxpayer supporting a portion of the cost of additional storage. Any additional costs of additional storage should be paid by those receiving the benefit. Stand ready to work with the bill author to address these concerns.

**Commented [A74]:** It is our understanding that it is not unusual or unique for the funding agencies to come to agreement on the cost allocations. Nevertheless, we have inserted language provided by DOI to clarify that costs will be allocated to the benefitting entity / entities.

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Federal monetary contribution made toward the construction cost of the relevant non-Federal project, if the contribution is predicated on flood control or other specific benefit.

(3) SECRETARY.—The term “Secretary” means the Secretary of the Army.

(b) Review by Secretary.—

(1) IN GENERAL.—Not later than 1 year after the date of receipt of a request from the owner of a non-Federal project, the Secretary, in consultation with the owner, shall review the water control manual and flood control rule curves and any operational or structural modifications proposed by the owner, including the use of improved weather forecasting and run-off forecasting methods, to enhance the existing purposes of the non-Federal project.

(2) REPORT.—Not later than 90 days after the date of completion of a review under paragraph (1), the Secretary shall submit to the owner of the applicable non-Federal project a report describing the results of the review.

(3) PRIORITY.—In carrying out of this subsection, the Secretary shall give priority to review and revision of water control manuals and flood control rule curves for any non-Federal project—

(A) that is located in a State in which a drought emergency has been declared during the 1-year period ending on the date of review by the Secretary;

(B) the owner of which has submitted to the Secretary a formal request to review or revise the operations manual or rule curves to accommodate new watershed data or proposed project modifications or operational changes;

(C) the water control manual and hydrometeorological information establishing the flood control rule curves of which have not been revised during the 20-year period ending on the date of review by the Secretary;

(D) with respect to which a completed probable maximum flood analysis or other data indicates that revisions of the project control manual or rule curves are likely to enhance water supply benefits and flood control operations; and

(E) modifications or operational changes proposed by the owner of which are likely to enhance water supply benefits and flood control operations.

(4) NON-FEDERAL CONTRIBUTIONS.—The Secretary may accept non-Federal funds for all or a portion of the cost of carrying out a review or revision of water control manuals and rule curves for non-Federal projects under this subsection.

## SEC. 407. CENTRAL VALLEY PROJECT.

(a) Cooperative Agreements.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, to determine the feasibility of an agreement for long-term use of an existing or expanded non-Federal storage or conveyance facility to augment Federal water supply, ecosystem, and operational flexibility benefits, the Secretary shall offer to enter into cooperative agreements



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with non-Federal entities to provide replacement water supplies for drought relief for—

(A) contractors of the Central Valley Project (as defined in section 3403 of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706));

(B) units of the National Wildlife Refuge System;

(C) State wildlife areas; and

(D) private wetland areas.

(2) REQUIREMENTS.—A cooperative agreement under this subsection shall—

(A) include the purchase of storage capacity in non-Federal facilities from willing sellers; and

(B) provide reimbursement for the temporary use of available capacity in existing above-ground, off-stream storage and associated conveyance facilities owned by local water agencies.

(b) Report.—Not later than 2 years after the date of enactment of this Act, the Secretary shall submit to the Chief of the National Wildlife Refuge System and contractors of the Central Valley Project a report describing the feasibility of the agreement for long-term use described in subsection (a)(1).

## TITLE V—WATER RIGHTS PROTECTIONS

### SEC. 501. PROTECTIONS FOR STATE WATER PROJECT CONTRACTORS.

If, as a result of the application of this Act, the California Department of Fish and Wildlife:

(a) revokes the consistency determination pursuant to California Fish and Game Code section 2080.1;

(b) amends or issues a new consistency determination pursuant to California Fish and Game Code section 2080.1 in a manner that results in reduced water supply to the State Water Project as compared with the water supply available under the Smelt Biological Opinion and the Salmonid Biological Opinion; or

(c) requires take authorization under section 2081 for operation of the State Water Project in a manner that results in reduced water supply to the State Water Project as compared with the water supply available under the Smelt Biological Opinion and the Salmonid Biological Opinion,

the water supply benefits of such action by the California Department of Fish and Wildlife accruing to the Central Valley Project, if any, shall be shared equally with the State Water Project.

**Commented [A75]:** We have not had a chance to fully analyze this Title. We will however continue to evaluate this section and reserve our rights with respect to the ability to provide technical feedback at that time.

## SEC. 502. AREA OF ORIGIN PROTECTIONS.

(a) The Secretary of the Interior (Secretary) is directed in the operation of the Central Valley Project (CVP) to adhere to California's water rights laws governing water rights priorities by honoring water rights senior to those held by the United States for operation of the CVP, regardless of the source of priority, including any appropriative water rights initiated prior to December 19, 1914, as well as water rights and other priorities perfected or to be perfected pursuant to California Water Code Part 2 of Division 2. Article 1.7 (commencing with section 1215 of Chapter 1 of Part 2 of Division 2, Sections 10505, 10505.5, 11128, 11460, 11461, 11462 and 11463, and Sections 12200 to 12220, inclusive).

(b) Any action that requires that diversions be bypassed or that involves the release of water from any CVP water storage facility taken by the Secretary or the Secretary of the Department of Commerce pursuant to Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531, et seq.) shall be applied in a manner that is consistent with water rights priorities established by California law.

## SEC. 503. NO REDIRECTED ADVERSE IMPACTS.

The Secretary shall ensure that, except as otherwise provided for in a water service or repayment contract, actions taken in compliance with legal obligations imposed pursuant to or as a result of this Act, including, but not limited to, such actions under the Endangered Species Act of 1973 (16 U.S.C. § 1531 et seq.) and other federal laws, shall not cause redirected adverse water supply or fiscal impacts to those within the Sacramento River Watershed or the State Water Project.

## SEC. 504. EFFECT ON STATE LAWS.

Nothing in this Act preempts any State law in effect on the date of enactment of this Act, including area of origin and other water rights protections.

## TITLE VI—MISCELLANEOUS

### SEC. 601. AUTHORIZED SERVICE AREA.

(a) In General.—The authorized service area of the Central Valley Project authorized under the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706) shall include the area within the boundaries of the Kettleman City Community Services District, California, as in existence on the date of enactment of this Act.

(b) Long-term Contract.—

(1) IN GENERAL.—Notwithstanding the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706) and subject to paragraph (2), the Secretary of the Interior, in accordance with the reclamation laws, shall enter into a long-term contract with the

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Kettleman City Community Services District, California, under terms and conditions mutually agreeable to the parties, for the delivery of up to 900 acre-feet of Central Valley Project water for municipal and industrial use.

(2) LIMITATION.—Central Valley Project water deliveries authorized under the contract entered into under paragraph (1) shall be limited to the minimal quantity necessary to meet the immediate needs of the Kettleman City Community Services District, California, in the event that local supplies or State Water Project allocations are insufficient to meet those needs.

(c) Permit.—The Secretary shall apply for a permit with the State for a joint place of use [for water deliveries authorized under the contract entered into under subsection (b)? with respect to the expanded service area under subsection (a)?], consistent with State law.

(d) Additional Costs.—If any additional infrastructure, water treatment, or related costs are needed to implement this section, those costs shall be the responsibility of the non-Federal entity.

## SEC. 602. RESCHEDULED WATER.

(a) In General.—In connection with operations of the Central Valley Project, California, if the San Luis Reservoir does not fill by the last day of February of any year, the Secretary of the Interior shall permit any entity with an agricultural water service or repayment contract for the delivery of water from the Delta Division or the San Luis Unit to reschedule into the immediately following contract year (March 1 through the last day of February) any unused Central Valley Project water previously allocated for irrigation purposes.

(b) Apportionment.—If water remaining in Federal storage in San Luis Reservoir on the last day of February of any year is insufficient to meet all rescheduling requests under subsection (a), the Secretary of the Interior shall, based on contract quantity, apportion among all contractors that request to reschedule water all water remaining in San Luis Reservoir on the last day of February of the applicable year.

(c) Availability of Additional Water.—The Secretary shall make all reasonable efforts to make available additional rescheduled water, if the efforts do not interfere with the Central Valley Project operations in the contract year for which Central Valley Project water has been rescheduled.

## SEC. 603. FISHERIES DISASTER DECLARATION.

[TO BE SUPPLIED.]

## SEC. 604. OVERSIGHT BOARD FOR RESTORATION FUND.

(a) Report; Advisory Board.—Section 3407 of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4726) is amended by adding at the end the following:

“(g) Report on Expenditure of Funds.—

“(1) IN GENERAL.—For each fiscal year, the Secretary, in consultation with the Advisory Board, shall submit to Congress a plan for the expenditure of all of the funds deposited into

**Commented [A76]:** Language has not been provided and the Administration is unable to make recommendations.

**Commented [A77]:** Still reviewing and per note below reserve the right to provide additional feedback.

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the Restoration Fund during the preceding fiscal year.

“(2) CONTENTS.—The plan shall include an analysis of the cost-effectiveness of each expenditure.

“(h) Advisory Board.—

“(1) ESTABLISHMENT.—There is established the Restoration Fund Advisory Board (referred to in this section as the ‘Advisory Board’), which shall be composed of 14 members appointed by the Secretary.

“(2) MEMBERSHIP.—

“(A) IN GENERAL.—The Secretary shall appoint members to the Advisory Board that represent the various Central Valley Project stakeholders, of whom—

“(i) 3 members shall be agricultural users of the Central Valley Project;

“(ii) 2 members shall be municipal and industrial users of the Central Valley Project;

“(iii) 3 members shall be power contractors of the Central Valley Project;

“(iv) 1 member shall be a representative of a federal wildlife refuge that contracts for Central Valley Project water supplies with the Bureau of Reclamation;

“(v) 1 member shall represent nongovernmental organizations involved in the protection and restoration of California fisheries;

“(vi) 1 member shall represent the commercial fishing industry;

“(vii) 1 member shall represent the recreational fishing industry; and

“(viii) 2 members shall be appointed at the discretion of the Secretary.

“(B) OBSERVER.—The Secretary and the Secretary of Commerce may each designate a representative to act as an observer of the Advisory Board.

“(C) CHAIRMAN.—The Secretary shall appoint 1 of the members described in subparagraph (A) to serve as Chairman of the Advisory Board.

“(3) TERMS.—The term of each member of the Advisory Board shall be 4 years.

“(4) DATE OF APPOINTMENTS.—The appointment of a member of the Panel shall be made not later than—

(A) the date that is 120 days after the date of enactment of this Act; or

(B) in the case of a vacancy on the Panel described in subsection (c)(2), the date that is 120 days after the date on which the vacancy occurs.

“(5) Vacancies.—

(A) IN GENERAL.—A vacancy on the Panel shall be filled in the manner in which the original appointment was made and shall be subject to any conditions that applied with respect to the original appointment.

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(B) FILLING UNEXPIRED TERM.—An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

(C) EXPIRATION OF TERMS.—The term of any member shall not expire before the date on which the successor of the member takes office.

“(6) Removal —A Member of the Panel may be removed from office by the Secretary of the Interior.

“(7) Federal Advisory Committee Act. —The Panel shall not be subject to the requirements of the Federal Advisory Committee Act.

“(8) DUTIES.—The duties of the Advisory Board are—

“(A) to meet not less frequently than semiannually to develop and make recommendations to the Secretary regarding priorities and spending levels on projects and programs carried out under this title;

“(B) to ensure that any advice given or recommendation made by the Advisory Board reflects the independent judgment of the Advisory Board;

“(C) not later than December 31, 2015, and annually thereafter, to submit to the Secretary and Congress the recommendations under subparagraph (A); and

“(D) not later than December 31, 2015, and biennially thereafter, to submit to Congress a report that details the progress made in achieving the actions required under section 3406.

“(9) ADMINISTRATION.—With the consent of the appropriate agency head, the Advisory Board may use the facilities and services of any Federal agency.”

“(10) Cooperation and Assistance.—

(A) Upon request of the Panel Chairperson for information or assistance to facilitate the carrying out of this section, the Secretary of the Interior shall promptly provide such information, unless otherwise prohibited by law.

(B) Space and Assistance.—The Secretary of the Interior shall provide the Panel with appropriate and adequate office space, together with such equipment, office supplies, and communications facilities and services as may be necessary for the operation of the Panel, and shall provide necessary maintenance services for such offices and the equipment and facilities located therein.

**Commented [A78]:** There may be unintended consequences to waving FACA. May want to consider some of the organizational/structural aspects of FACA.

## SEC. 605. WATER OPERATIONS REVIEW PANEL.

(a) Establishment.—There is established a panel to be known as the “Water Operations Review Panel”.

(b) Membership.—

(1) COMPOSITION.—The Panel shall be composed of 5 members appointed by the Secretary of the Interior, in consultation with the Secretary of Commerce, of whom—

(A) 1 member shall be a former State elected official, who shall be the Chairperson of the Panel;



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(B) 2 members shall be fisheries biologists, of whom—

(i) 1 member shall have expertise in Delta smelt; and

(ii) 1 member shall have expertise in salmonids; and

(C) 2 members shall ~~have~~ be engineers with substantial expertise in water operations.

(2) RECOMMENDATIONS. —The Secretary of the Interior shall consider the recommendations

(A) of the Governor of the State for the member appointed under subparagraph (1)(A);

(B) of the Director of the California Department of Water Resources for one of the members appointed under subparagraph (1)(C).

(3) PROHIBITION ON FEDERAL GOVERNMENT EMPLOYMENT.—For at least three years prior to appointment to the Panel, an individual appointed to the Panel under paragraph (1) shall not have been an employee of the Federal Government.

(4) DATE OF APPOINTMENTS.—The appointment of a member of the Panel shall be made not later than—

(A) the date that is 120 days after the date of enactment of this Act; or

(B) in the case of a vacancy on the Panel described in subsection (c)(2), the date that is 120 days after the date on which the vacancy occurs.

(c) Term; Vacancies.—

(1) TERMS.—A member of the Panel shall be appointed for a term of 3 years, except that, with respect to the members first appointed under this section—

(A) the Chairperson shall be appointed for a term of 3 years;

(B) of the members appointed under subsection (b)(1)(B)—

(i) 1 member shall be appointed for a term of 1 year; and

(iii) 1 member shall be appointed for a term of 2 years;

(C) of the members appointed under subsection (b)(1)(C)—

(i) 1 member shall be appointed for a term of 1 year; and

(ii) 1 member shall be appointed for a term of 2 years.

(2) VACANCIES.—

(A) IN GENERAL.—A vacancy on the Panel shall be filled in the manner in which the original appointment was made and shall be subject to any conditions that applied with respect to the original appointment.

(B) FILLING UNEXPIRED TERM.—An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

(3) EXPIRATION OF TERMS.—The term of any member shall not expire before the date on

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which the successor of the member takes office.

(d) Removal. –A Member of the Panel may be removed from office by the Secretary of the Interior.

(e) Federal Advisory Committee Act. —The Panel shall not be subject to the requirements of the Federal Advisory Committee Act

(f) Duties.

(1) Annual Assessment and Report on Agencies' Operational Decisions under this Act.—

(A) IN GENERAL.—No later than November 30, 2015, and annually no later than November 30 thereafter, the Panel shall report an assessment of the agencies' operational decisions under this Act and recommendations for the prospective implementation of this Act to the following Congressional committees:

(i) Senate Committee on Environment and Public Works;

(ii) Senate Appropriations Subcommittee on Energy and Water Development;

(iii) House Natural Resources Committee; and

(iv) House Appropriations Subcommittee on Energy and Water Development.

(B) RETROSPECTIVE ASSESSMENT.—In making the retrospective assessment under paragraph (1), the Panel shall review and evaluate the Director of the Fish and Wildlife Service, Administrator of NOAA Fisheries, and Commissioner of Reclamation's —

(i) decisions in implementing this Act and other Federal laws applicable to the operations of the Central Valley Project and the State Water Project;

(ii) compliance with the Endangered Species Act in relation to operations of the Central Valley Project and the State Water Project; and

(iii) efforts to minimize water supply disruptions while complying with the Endangered Species Act and this Act.

(C) PROSPECTIVE RECOMMENDATIONS.—The Panel shall make recommendations for prospective actions and potential actions warranting further study to better achieve the purposes of this Act and the Endangered Species Act as applied to the operations of the Central Valley Project and the State Water Project, including proposals—

(i) that in combination, both increase the survival of listed species and increase water supplies for the Central Valley Project and the State Water Project;

(ii) to increase the survival of listed fish species with little to no adverse effects on water supplies for the Central Valley Project and the State Water Project that would result from taking the specific proposed action recommended;

(iii) to increase such water supplies with little to no adverse effects on the survival of listed fish species; and

(iv) that respond to the annual Delta Science Program Independent Review Panel reports on the Long-term Operations Opinions.

**Commented [A79]:** There may be unintended consequences to waving FACA. May want to consider some of the organizational/structural aspects of FACA.

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**Commented [A80]:** Compared to what? Their 100% allocations? The average of the last 5 years? Allocation from the same water year type in the past?

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**Commented [A81]:** Technical change to address the question in the comment immediately above

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(2) Five-Year Assessment on Effectiveness of Provisions of Act and Recommended  
Legislative Changes

(A) IN GENERAL.—No later than five years after the date of enactment of this Act, and every five years thereafter, the Panel shall issue a report that

(i) evaluates the effectiveness of the provisions of this Act; and

(ii) makes legislative recommendations on:

(I) provisions of this Act that should be amended or repealed because they are not effective or for other reasons; and

(II) alternative legislation or modifications to this Act that could provide additional water supplies for the Central Valley Project and the State Water Project without reducing the survival of listed species.

(B) GOAL FOR RECOMMENDATIONS.—To the extent possible, the Panel shall submit legislative recommendations which in the aggregate would improve water supplies for the Central Valley Project and the State Water Project and increase the survival of listed fish species.

(C) SUBMITTAL TO CONGRESS.—The Panel shall submit its legislative recommendations to the Congressional committees listed in paragraph (1)(A).

(3) Submission of Comments and Proposals to Panel.—

(A) IN GENERAL.—In preparing the reports under paragraphs (1) and (2) subsections (a) and (b), the Panel shall invite comments and proposals from any interested person.

(B) SCHEDULE.—The Panel shall publish a schedule for receipt of comments and proposals under subparagraph (A), together with instructions for how to submit the comments and proposals.

(f) Cooperation and Assistance. ---

(1) Upon request of the Panel Chairperson for information or assistance to facilitate the carrying out of this section, the Secretary of Commerce and the Secretary of the Interior shall promptly provide such information, unless otherwise prohibited by law.

(2) Space and Assistance --- The Secretary of the Interior shall provide the Panel with appropriate and adequate office space, together with such equipment, office supplies, and communications facilities and services as may be necessary for the operation of the Panel, and shall provide necessary maintenance services for such offices and the equipment and facilities located therein.

SEC. 606. CONTINGENCY IN EVENT OF CONTINUING  
RESOLUTION FOR FISCAL YEAR 2015.

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Commented [A82]: This section is added to provide an independent review of the effectiveness of the provisions of this Act, and for the Panel to suggest provisions that should be repealed or modified if they aren't working, and alternative legislative recommendations for ways to provide additional water supplies without harming the listed fish

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Commented [A83]: Changes in this paragraph are technical conforming changes to reflect the correct section numbering and lettering

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If a resolution providing continuing appropriations for the Fish and Wildlife Service or the National Marine Fisheries Service for fiscal year 2015 is enacted for any date on or after January 1, 2015, and the Secretaries have consulted with the California Department of Water Resources, Central Valley Project and State Water Project contractors, and the Interagency Ecological Program about any possible funding shortfall, the deadlines that apply to each respective Secretary, or agency, contained in sections \_\_\_\_\_ shall be extended by the number of days such resolution providing continuing appropriations applied to each agency.

SEC. 303. OPERATIONAL FLEXIBILITY IN TIMES OF DROUGHT

(1) IN GENERAL. In response to the declaration of a state of drought emergency by the Governor of California and for the period of time such the severe drought remains in effect as determined by the United States Drought Monitor, the Secretaries shall seek to enhance operational flexibility in the operations of the CVP and the State Water Project to alleviate the adverse effects of the drought on water supplies, imperiled species, and water quality through the development of a 2015 Drought Operations Plan. This 2015 Drought Operations Plan, consistent with applicable law, will seek to provide the maximum quantity of water supplies possible to Central Valley Project agricultural, municipal and industrial, and refuge water service and repayment contractors, State Water Project contractors, and any other locality or municipality in the State, by approving, consistent with applicable federal and state laws (including regulations) and protection of public health and safety, projects and operations to provide additional water supplies as quickly as possible based on the best scientific information available to address the emergency conditions.

(a) Preparation of a Drought Operations Plan. The Secretaries shall develop and implement a Drought Operations Plan by March 1 that maximizes water deliveries for CVP and SWP contractors while also meeting all applicable legal standards, including those established in this Act. The Secretaries shall be authorized to make adjustments to the plan during the water year based on changes in hydrology or as conditions warrant. The Secretaries shall be authorized to make adjustments consistent with applicable law and regulations prior to March 1<sup>st</sup>, as necessary to meet the purposes of this section.

(b) Plan Content. In carrying out subsection (a), the Secretaries shall, consistent with applicable laws and regulations,

— Evaluate new information on species distribution through enhanced monitoring and/or modeling;

— Identify operations, with accompanying modelling, necessary to preserve cold water in reservoirs for salmon needs while maintaining Delta needs;

— Identify modification to Delta cross-channel gate operations, to address adverse effects of operations on water quality or fish migrations as per Operations in the 2014 Drought Operations Plan;

— Encourage the CVP to vary the export/info ratio as per D 1641 Operations in the 2014 Drought Operations Plan;

**Commented [A84]:** Suggested Alternative Language we have previously provided.

**Commented [A85]:** See comment at top of existing section 303 above

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- 1 ~~— Analyze potential operational scenarios during early season storms that may occur~~
- 2 ~~prior to January 1, 2015, including a scenario for 7500 cfs average OMR during~~
- 3 ~~December 2014, and alternative scenarios that might be implemented in the event~~
- 4 ~~environmental conditions or fish distribution indicate that the thresholds and~~
- 5 ~~criteria triggering Component 1, Action 1 of the 2008 FWS operations BiOp~~
- 6 ~~might soon be met.~~
- 7 ~~— Monitor and act upon the declaration of critically dry years for purposes of~~
- 8 ~~enabling the use of the San Joaquin April-May 1:1 inflow/export ratio to enhance~~
- 9 ~~early spring exports;~~
- 10 ~~— Consider, through the NMFS adaptive management 2009 BiOp provisions,~~
- 11 ~~adjustment to the San Joaquin I:E ratio to provide for San Joaquin origin water~~
- 12 ~~transfers to be exported at a 1:1 ratio irrespective of water year type, including~~
- 13 ~~any additional monitoring, operational adjustments or offsets that may be needed~~
- 14 ~~to conserve species;~~
- 15 ~~— Consider, through the NMFS adaptive management 2009 BiOp provisions,~~
- 16 ~~adjustment of the January 1<sup>st</sup> on set of 5000 OMR to reflect real time migration~~
- 17 ~~information on Winter-run Chinook salmon;~~
- 18 ~~— Identify any temporary emergency barriers that may be needed for purposes of~~
- 19 ~~salinity control; and~~
- 20 ~~— Identify other actions necessary to conserve species, including additional~~
- 21 ~~monitoring, hatchery and/or habitat actions.~~

22 ~~(2) APPLICATION. — In addition to the Central Valley Project, paragraph (1) also applies to~~  
23 ~~projects or operations involving the Klamath Project if the projects or operations would benefit~~  
24 ~~Federal water service and repayment contractors in California.~~

25 ~~(b) Limitation. — Nothing in this section allows agencies to approve projects —~~

26 ~~(1) that would otherwise require congressional authorization; or~~

27 ~~(2) without following applicable law and regulations.~~



**From:** Watts, John (Feinstein)  
**Sent:** Thursday, October 2, 2014 7:19 AM  
**To:** Bernhardt, David L.; 'Tom Birmingham'  
**Subject:** Edits to continuing resolution section

I have edited and revised the structure of this section, filled in the gaps of which sections shall have deadlines extended in the absence of funding. Does this look OK to you?

## SEC. 606. CONTINGENCY IN EVENT OF CONTINUING RESOLUTION FOR FISCAL YEAR 2015.

The deadlines that apply to each respective Secretary, or agency, contained in sections 103(b), 103(d), 202, 204, and 205 shall be extended by the number of days that any resolution providing continuing appropriations for the Fish and Wildlife Service or NOAA Fisheries for fiscal year 2015 is in effect after January 1, 2015, if:

- (1) such a resolution providing continuing appropriations for these agencies is enacted;
- (2) the continuing resolution does not include funding for the agency actions prescribed in the sections of this Act specified above; and
- (3) a funding shortfall remains for such agency actions after the Secretaries have consulted with the California Department of Water Resources, Central Valley Project and State Water Project contractors, and the Interagency Ecological Program.

**From:** Watts, John (Feinstein)  
**Sent:** Thursday, October 2, 2014 1:41 PM  
**To:** 'Tom Birmingham'; Brenda W Burman; Bernhardt, David L.  
**Subject:** Can we do a call at 530 eastern time?

If so, does someone have a call-in number we can use? Thanks

**From:** Burman,Brenda W  
**Sent:** Thursday, October 2, 2014 1:57 PM  
**To:** Watts, John (Feinstein); 'Tom Birmingham'; Bernhardt, David L.  
**Subject:** RE: Can we do a call at 530 eastern time?

Sorry, I have a conflict until 6:30pm edt.

---

**From:** Watts, John (Feinstein) [mailto:John\_Watts@feinstein.senate.gov]  
**Sent:** Thursday, October 02, 2014 1:41 PM  
**To:** 'Tom Birmingham'; Burman,Brenda W; Bernhardt, David L.  
**Subject:** Can we do a call at 530 eastern time?

If so, does someone have a call-in number we can use? Thanks

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**From:** Tom Birmingham  
**Sent:** Thursday, October 2, 2014 2:04 PM  
**To:** 'Watts, John (Feinstein)'; 'Brenda W Burman'; 'Bernhardt, David L.'  
**Subject:** RE: Can we do a call at 530 eastern time?

I am available.

---

**From:** Watts, John (Feinstein) [mailto:John\_Watts@feinstein.senate.gov]  
**Sent:** Thursday, October 02, 2014 1:41 PM  
**To:** 'Tom Birmingham'; Brenda W Burman; Bernhardt, David L.  
**Subject:** Can we do a call at 530 eastern time?

If so, does someone have a call-in number we can use? Thanks

**From:** Watts, John (Feinstein)  
**Sent:** Thursday, October 2, 2014 2:18 PM  
**To:** 'Tom Birmingham'; 'Brenda W Burman'; 'Bernhardt, David L.'  
**Subject:** RE: Can we do a call at 530 eastern time?

Tom and David, Can you do 6:30 when Brenda is available?

If that works, Brenda, can we use Met's call-in number, and can you send it around?

---

**From:** Tom Birmingham [mailto:tbirmingham@westlandswater.org]  
**Sent:** Thursday, October 02, 2014 5:04 PM  
**To:** Watts, John (Feinstein); 'Brenda W Burman'; 'Bernhardt, David L.'  
**Subject:** RE: Can we do a call at 530 eastern time?

I am available.

---

**From:** Watts, John (Feinstein) [mailto:[John\\_Watts@feinstein.senate.gov](mailto:John_Watts@feinstein.senate.gov)]  
**Sent:** Thursday, October 02, 2014 1:41 PM  
**To:** 'Tom Birmingham'; Brenda W Burman; Bernhardt, David L.  
**Subject:** Can we do a call at 530 eastern time?

If so, does someone have a call-in number we can use? Thanks



**From:** Burman,Brenda W  
**Sent:** Thursday, October 2, 2014 2:19 PM  
**To:** Watts, John (Feinstein); 'Tom Birmingham'; 'Bernhardt, David L.'  
**Subject:** RE: Can we do a call at 530 eastern time?

213 [REDACTED] - [REDACTED] code [REDACTED]

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**From:** Watts, John (Feinstein) [[mailto:John\\_Watts@feinstein.senate.gov](mailto:John_Watts@feinstein.senate.gov)]  
**Sent:** Thursday, October 02, 2014 2:18 PM  
**To:** 'Tom Birmingham'; Burman,Brenda W; 'Bernhardt, David L.'  
**Subject:** RE: Can we do a call at 530 eastern time?

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**From:** Tom Birmingham [<mailto:tbirmingham@westlandswater.org>]  
**Sent:** Thursday, October 02, 2014 5:04 PM  
**To:** Watts, John (Feinstein); 'Brenda W Burman'; 'Bernhardt, David L.'  
**Subject:** RE: Can we do a call at 530 eastern time?

I am available.

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**From:** Watts, John (Feinstein) [[mailto:John\\_Watts@feinstein.senate.gov](mailto:John_Watts@feinstein.senate.gov)]  
**Sent:** Thursday, October 02, 2014 1:41 PM  
**To:** 'Tom Birmingham'; Brenda W Burman; Bernhardt, David L.  
**Subject:** Can we do a call at 530 eastern time?

If so, does someone have a call-in number we can use? Thanks

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**From:** Tom Birmingham  
**Sent:** Thursday, October 2, 2014 2:23 PM  
**To:** 'Watts, John (Feinstein)'; 'Brenda W Burman'; 'Bernhardt, David L.'  
**Subject:** RE: Can we do a call at 530 eastern time?

I will make myself available.

---

**From:** Watts, John (Feinstein) [[mailto:John\\_Watts@feinstein.senate.gov](mailto:John_Watts@feinstein.senate.gov)]  
**Sent:** Thursday, October 02, 2014 2:18 PM  
**To:** 'Tom Birmingham'; 'Brenda W Burman'; 'Bernhardt, David L.'  
**Subject:** RE: Can we do a call at 530 eastern time?

Tom and David, Can you do 6:30 when Brenda is available?

If that works, Brenda, can we use Met's call-in number, and can you send it around?

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**From:** Tom Birmingham [<mailto:tbirmingham@westlandswater.org>]  
**Sent:** Thursday, October 02, 2014 5:04 PM  
**To:** Watts, John (Feinstein); 'Brenda W Burman'; 'Bernhardt, David L.'  
**Subject:** RE: Can we do a call at 530 eastern time?

I am available.

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**From:** Watts, John (Feinstein) [[mailto:John\\_Watts@feinstein.senate.gov](mailto:John_Watts@feinstein.senate.gov)]  
**Sent:** Thursday, October 02, 2014 1:41 PM  
**To:** 'Tom Birmingham'; Brenda W Burman; Bernhardt, David L.  
**Subject:** Can we do a call at 530 eastern time?

If so, does someone have a call-in number we can use? Thanks

**From:** Watts, John (Feinstein)

**Sent:** Thursday, October 2, 2014 2:34 PM

**To:** 'Tom Birmingham'; Bernhardt, David L.

**Subject:** Attachments for discussion on our 630 eastern time call

**Attachments:** section 309 clean 10-2-14.docx; section 203 edits clean 10-2-14.docx

Here is where we stand on the section 309 and section 203 issues discussed on this afternoon's call with the agencies. The section 309 language is not ideal, but I am hopeful it will work, and the agencies and their counsel are adamant in not wanting to qualify "additional adverse effects" by adding a modifier such as "significant".

The agencies contend that per the ESA handbook, "adverse effects" cannot be insignificant.

[https://www.fws.gov/ENDANGERED/esa-library/pdf/esa\\_section7\\_handbook.pdf](https://www.fws.gov/ENDANGERED/esa-library/pdf/esa_section7_handbook.pdf)

See definitions on p. xv

I think the section 203 edits should work well for us.

There are some other issues that came up on the call that I would like to discuss with you.

## SEC. 309. TEMPORARY OPERATIONAL FLEXIBILITY FOR FIRST FEW STORMS OF 2014-2015 WATER YEAR.

### (a) Findings:

- (1) During the 2014 water year, operations of the Central Valley Project and the State Water Project, the incidental take of adult Delta smelt was zero; of juvenile Delta smelt, 78 (7.7% of the incidental take limit); of winter run chinook, 339 (1.4% of the incidental take limit); of spring run chinook, zero; and of steelhead, 261 (8.7% of the incidental take limit).
- (2) The Central Valley Project and State Water Project exceeded a Old and Middle River flow of -5,000 cubic feet per second over a 14-day average for brief periods after three storm events in February and March 2014, as a result of increased pumping, but did not cause substantially increased take of smelt or salmon.
- (3) Hydrological conditions in dry years, such as the 2014 water year, have not triggered water pumping restrictions pursuant to the 2008 smelt biological opinion.
- (4) The Secretaries should be allowed more flexibility to increase pumping levels without causing significant risk to the listed species or weakening other environmental protections.
- (5) Given California's severe drought conditions, significant groundwater withdrawals for irrigation due to lack of surface water supplies, and the depletion of water supplies in reservoirs, it is imperative that the Secretaries exercise the flexibility provided herein to capture the maximum amount of storm flows when and if they occur in the 2015 water year, and provide for the diversion of those supplies to the Central Valley Project and State Water Project so that farms, businesses, and homes in drought-stricken areas will have an opportunity to bolster their meager supplies when water is available.

(b) In general. Consistent with avoiding additional adverse effects upon listed fish species beyond the range of those authorized under the ESA and other environmental protections under subsection (e), the Secretaries shall authorize the Central Valley Project and the State Water Project, combined, to operate at levels that result in Old and Middle River flows at up to -7500 cubic feet per second (based on USGS gages on Old and Middle rivers) daily average for up to 21 cumulative days after October 1, 2014, as described in subsection (c).

(c) Days of temporary operational flexibility. The temporary operational flexibility described in subsection (b) shall be authorized on days that the California Department of Water Resources determines the daily average river flow of the Sacramento River is at, or above, 17,000 cubic feet per second as measured at the Sacramento River at Freeport gauge maintained by the United States Geologic Survey.

(d) Compliance with ESA authorizations. In carrying out this section, the Secretaries may continue to impose any requirements under the biological opinions during any period of temporary operational flexibility as they determine are reasonably necessary to avoid additional adverse effects on listed fish species beyond the range of those authorized under the Endangered Species Act.

(e) Other environmental protections.

- (1) The Secretaries' actions under this section shall be consistent with applicable regulatory requirements under state law, including State Water Resources Control Board Decision 1641, as it may be implemented in any given year;
- (2) During the first flush of sediment out the Delta during the 2015 water year, OMR flow may be managed at rates less negative than -5000 cubic feet per second for a minimum duration to avoid movement of adult delta smelt (*Hypomesus transpacificus*) to areas in the southern Delta that would be likely to increase entrainment at Central Valley Project and State Water Project pumping plants;
- (3) This section shall not have any effect on the applicable requirements of the salmonid biological opinion from April 1 to May 31, unless the Secretary of Commerce finds that some or all of such applicable requirements may be adjusted during this time period to provide emergency water supply relief without resulting in additional adverse effects beyond those authorized under the ESA.
- (4) During operations under this section, the Commissioner of Reclamation, in coordination with the Fish and Wildlife Service, National Marine Fisheries Service, and California Department of Fish and Wildlife, shall undertake a monitoring program and other data gathering to insure take limits levels are not exceeded, and to identify potential negative impacts and actions necessary to mitigate any impacts of the temporary operational flexibility to species listed as threatened or endangered under the Endangered Species Act, 16 U.S.C. 1531-1544; and
- (5) The Commissioner is authorized to take any action, including the transfer of appropriated funds between accounts that, in the Commissioner's judgment, are necessary to mitigate the impacts of such operations as long as any such mitigation is consistent with the requirements of this section.

(f) Technical adjustments to target period. If, before temporary operational flexibility has been implemented on 21 cumulative days, the Secretaries operate the Central Valley Project and the State Water Project combined at levels that result in Old and Middle River flows less negative than -7500 cubic feet per second during days of temporary operational flexibility as defined in subsection (c), the duration of such operation shall not be counted toward the 21 cumulative days specified in subsection (b).

(g) Emergency consultation; effect on running averages.

1) If necessary to implement the provisions of this section, the Commissioner shall use the emergency consultation procedures under the Endangered Species Act and its implementing regulation at 50 CFR 402.05 to temporarily adjust the operating criteria under the biological opinions, solely for the 21 days of temporary operational flexibility—

A) no more than necessary to achieve the purposes of this section consistent with the environmental protections in subsections (d) and (e); and

B) including, as appropriate, adjustments to ensure that the actual flow rates during the periods of temporary operational flexibility do not count toward the 5-day and 14-day running averages of tidally filtered daily Old and Middle River flow requirements under the biological opinions.

2) Following the conclusion of the 21 days of temporary operational flexibility, the Commissioner shall not reinitiate consultation on these adjusted operations if the effects



on listed fish species of these operations under this section remain within the range of those authorized under the Endangered Species Act.

(h) Level of detail required for analysis. In articulating the determinations required under this section, the Secretaries shall fully satisfy the requirements herein but shall not be expected to provide a greater level of supporting detail for the analysis than feasible to provide within the short time frame permitted for timely decision-making in response to changing conditions in the Delta.

(i) Duration. This section shall expire on September 30, 2015.

## **Edits to Section 203 on the standard for equivalent alternative measures.**

(d) Taking into account offsetting species survival benefits from other measures.

1. When examining opportunities to offset the potential adverse effect of adjustments to operating criteria, the Commissioner and the Assistant Administrator shall take into account the potential salmonid survival improvements that are likely to result from other measures which, if implemented in conjunction with the adjustments, would offset the adverse effects of the adjustments. When considering offsetting measures, the Commissioner and the Assistant Administrator shall consider the type, timing and nature of the adverse effects to specific species and ensure that the measures provide equivalent overall benefits to the listed species in the aggregate, as long as the change in survival rates for each species remains consistent with the Endangered Species Act and implementing regulations.

(g) Comparison of adverse consequences for alternative management measures of equal benefit to the salmon.—

(1) For the purposes of this subsection—

(A) The alternative management measure or combination of alternative management measures identified in paragraph (2) shall be known as the “equivalent alternative measure.”

(B) The existing measure or measures identified in subparagraphs (2)(A),(B),(C), or (D) shall be known as the “equivalent existing measure.”

(C) An “equivalent increase in through-Delta survival rates for listed salmonid species” shall mean an increase in through-Delta survival rates that is equivalent when considering the change in through-Delta survival rates for the listed salmonid species in the aggregate, and not necessarily the same change for each individual species, as long as the change in survival rates for each species remains consistent with the Endangered Species Act and implementing regulations.

**From:** Watts, John (Feinstein)  
**Sent:** Friday, October 3, 2014 3:29 PM  
**To:** 'Tom Birmingham'; Bernhardt, David L.  
**Subject:** I will send the document tomorrow

I am virtually certain the agencies have no significant further changes, but they have been waiting for a couple of hours for high-level sign off, and they don't know when they will get it. So I am going to go to my Kol Nidre services tonight and send the document tomorrow. My understanding from Kiel is that this timing works. Thanks.

**From:** Watts, John (Feinstein)  
**Sent:** Saturday, October 4, 2014 8:36 AM  
**To:** 'tbirmingham@westlandswater.org'; 'DBernhardt@BHFS.com'  
**Subject:** Language sent to Kiel attached  
**Attachments:** section 204 agency edits 10-3-14.docx; draft language 10-3-2014.docx

Yay! We got the Administration clearance on its technical drafting assistance, and the language is sent. I also separately sent a redlined version of section 204 on the predator pilot program on the Stanislaus, so Denham's office as the lead author of that provision can see and respond to the agencies' (relatively few) suggested edits. I sent Kiel a clean version of the language, with just a few comment bubbles on factual issues the agencies are still checking, and on a few provisions where the agencies' expert technical drafting assistance is still in process.

Tom, can we talk some time over the weekend? I am going over the current language with House staff Monday at 3, and want to talk about ways to characterize it. Thanks.

----- Original Message -----

From: Watts, John (Feinstein)  
Sent: Saturday, October 04, 2014 10:33 AM Eastern Standard Time  
To: Watts, John (Feinstein)  
Subject:

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SEC. 204. PILOT PROGRAM TO PROTECT NATIVE  
ANADROMOUS FISH IN THE STANISLAUS RIVER.

(a) Establishment of Non-native Predator Fish Removal Program. The Assistant Administrator, in consultation with the United States Fish and Wildlife Service and the California Department of Fish and Wildlife, shall develop and conduct a pilot non-native predator fish removal program to remove non-native striped bass, smallmouth bass, largemouth bass, black bass, and other non-native predator fishes in and around the Bay Delta, including the Stanislaus River, contingent upon funding. The pilot program shall--

(1) be scientifically based;

(2) include methods to quantify the number and size of predator fishes removed each year, the impact of such removal on the overall abundance of predator fishes, and the impact of such removal on the populations of juvenile anadromous fish found in the Stanislaus River and elsewhere by, among other things, evaluating the number of juvenile anadromous fish that migrate past the rotary screw trap located at Caswell;

(3) among other methods, use wire fyke trapping, portable resistance board weirs, and boat electrofishing, which are among the most effective predator collection techniques that minimize effects to native anadromous fish;

(4) be developed, including the application for all necessary scientific research and species enhancement permits under section 10(a)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)), for the performance of the pilot program, not later than 6 months after the date of the enactment of this Act;

(5) be implemented on the first business day of the calendar year following the issuance of all necessary scientific research, and species enhancement permits, and funding needed to begin the pilot program; and

(6) be implemented for a period of seven consecutive calendar years.

(b) Management. The Assistant Administrator is authorized and encouraged to enter into agreements with interested local water districts to jointly develop, implement and evaluate this pilot program. Such parties shall work collaboratively to ensure the performance of the pilot program, and shall discuss and agree upon, among other things, changes in the structure, management, personnel, techniques, strategy, data collection, reporting and conduct of the pilot program.

(c) Conduct.—

(1) IN GENERAL.— By agreement between the Assistant Administrator and the participating districts, the pilot program may be conducted by their own personnel, qualified private contractors hired by the districts, personnel of, on loan to, or otherwise assigned to NOAA Fisheries, or a combination thereof.

(2) PARTICIPATION BY NOAA FISHERIES.—In the event the districts elect to conduct the program using their own personnel or qualified private contractors hired by them, the Commissioner has the option to assign an employee of, on loan to, or otherwise assigned to NOAA Fisheries, to be present for all activities performed in the field. Such presence shall

**Commented [A1]:** The predator removal program should be conducted upstream of Caswell. That specificity should be stated somewhere. Maybe insert a new #2 to say, "on the Stanislaus River, be conducted upstream of the rotary screw trap at Caswell."

**Commented [A2]:** Feinstein Office Comment: Representative Denham was the author of a modified version of this section that was in the House bill, and has agreed to changes to his original proposal that are reflected in the language of this section. We do not have any objection to the agencies' proposed changes to section 204, but would suggest going over them with Denham's staff when we discuss this proposal with the House.



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ensure compliance with the agreed upon elements specified in subsection (b). The districts shall pay 100 percent of the cost of such participation as specified in subsection (d).

(3) TIMING OF ELECTION.—The districts shall notify the Assistant Administrator of their election on or before October 15 of each calendar year of the pilot program, which election shall apply to the work performed in the subsequent calendar year.

(d) Funding.—

(1) ANNUAL FUNDING.—The Commissioner, the Assistant Administrator, and the participating districts shall develop a budget and funding plan for the pilot project that will allocate costs appropriately amongst the participating entities. On or before December 1 of each year of the pilot program, the Commissioner shall submit to the districts an estimate of the cost to be incurred by the Bureau of Reclamation in the following calendar year, if any, including the cost of any data collection and posting under subsection (e). If an amount equal to the estimate is not provided to ~~the fund directed by~~ the Assistant Administrator by the districts on or before December 31 of each year, (a) NOAA Fisheries shall have no obligation to conduct the pilot program activities otherwise scheduled, and (b) the districts shall be prohibited from conducting any aspect of the pilot program, until full payment is made by the districts.

(2) ACCOUNTING.—On or before September 1 of each calendar year, the Assistant Administrator shall provide an accounting of the prior calendar year's expenses to the participating entities. If the estimate paid by the districts was less than the actual costs incurred by NOAA Fisheries, the districts shall have until September 30 of that calendar year to pay the difference to the fund identified by the Assistant Administrator in subsection (d)(1). ~~or NOAA Fisheries shall have no obligation to conduct the pilot program activities otherwise scheduled.~~ If the estimate paid by the districts was greater than the actual costs incurred by NOAA Fisheries, then a credit shall be provided to the districts, which shall be deducted from the estimate payment the districts must make for the work performed by NOAA Fisheries, if any, in the next calendar year.

(e) Reporting and Evaluation.—

(1) IN GENERAL.—On or before the 15th day of each month, the Assistant Administrator shall post on the website of NOAA Fisheries a tabular summary of the raw data collected in the prior month.

(2) REPORT.—On or before June 30 of the calendar year following the completion of the program, the Assistant Administrator and districts shall jointly submit a report for publication ~~peer reviewed report~~ that—

- (A) discusses the findings and conclusions of the pilot program;
- (B) synthesizes the data collected under paragraph (1); and
- (C) makes recommendations for further study and action.

(f) Permits Process.—

(1) Not later than one year after filing of an application by the Assistant Administrator and the districts, the Secretary of the Interior, the Secretary of Commerce, or both, as appropriate, shall issue all necessary scientific research and species enhancement permits

**Commented [A3]:** Publication timelines vary, should not set a deadline for peer reviewed report, but rather, submission of the report for peer review.

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under section 10(a)(1) of the Endangered Species Act (16 U.S.C. 153(9)(a)(1)), for the performance of the pilot program.

(2) All permits issued shall be in the name of NOAA Fisheries and the participating districts.

(3) Districts may delegate the authority to administer the permit authority to any qualified private contractor retained in accordance with subsection (c).

(g) Emergency Environmental Reviews.—To expedite this environmentally beneficial program for the conservation of threatened and endangered species, the Secretary of the Interior shall consult with the Council on Environmental Quality in accordance with Section 1506.11 of title 40, Code of Federal Regulations (including successor regulations) to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 for this section.

(h) Definitions.—For the purposes of this section:

(1) COMMISSIONER.—The term `Commissioner' means the Commissioner of the Bureau of Reclamation.

(2) DISTRICTS.—The term `districts' means the Oakdale Irrigation District and the South San Joaquin Irrigation District.

(3) PILOT PROGRAM.—The term `program' means the pilot non-native predator removal program established under this section.

(i) Sunset.—The authorities provided under this section shall expire seven years after the implementation of the pilot program.

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Title: To provide drought relief in the State of California, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) Short Title.—This Act may be cited as the “California Drought Relief Act of 2014”.

(b) Table of Contents.—The table of contents of this Act is as follows:

Sec.1.Short title; table of contents.

Sec.2.Findings.

Sec.3.Definitions.

**TITLE I—ADJUSTING DELTA SMELT MANAGEMENT  
BASED ON INCREASED REAL-TIME MONITORING AND  
UPDATED SCIENCE**

Sec.101.Definitions.

Sec.102.Revise incidental take level calculation to reflect new science.

Sec.103.Factoring increased real-time monitoring and updated science into delta smelt management.

**TITLE II—ENSURING SALMONID MANAGEMENT IS  
RESPONSIVE TO NEW SCIENCE**

Sec.201.Definitions.

Sec.202.Required scientific studies.

Sec.203.Process for ensuring salmonid management is responsive to new science.

Sec.204.Pilot program to protect native anadromous fish in the Stanislaus River.

Sec.205.CALFED invasive species pilot projects in the Sacramento-San Joaquin Bay Delta and its tributaries.

Sec.206.Mark fishery and harvest management.

Sec.207.New actions to benefit Central Valley salmonids.

**TITLE III—OPERATIONAL FLEXIBILITY AND DROUGHT  
RELIEF**

Sec.301.Findings.

Sec.302.Definitions.

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- 1 Sec.303.Operational flexibility in times of drought.
- 2 Sec.304.Operation of cross-channel gates.
- 3 Sec.305.Flexibility for export/inflow ratio.
- 4 Sec.306.Emergency environmental reviews.
- 5 Sec.307.Prioritizing State revolving funds during droughts.
- 6 Sec.308.Increased flexibility for regular project operations.
- 7 Sec.309.Temporary operational flexibility for first few storms of 2015 water year.
- 8 Sec.310.Expediting water transfers.
- 9 Sec.311.Warren Act contracts. [PLACEHOLDER]
- 10 Sec.312.Additional Warren Act contracts. [PLACEHOLDER]

11 **TITLE IV—INCREASING WATER STORAGE**

- 12 Sec.401.Findings.
- 13 Sec.402.Calfed storage feasibility studies.
- 14 Sec.403.Water storage project construction.
- 15 Sec.404.Other storage feasibility studies.
- 16 Sec.405.Dam safety projects with increased storage component.
- 17 Sec.406.Updating water operations manuals for non-Federal projects.
- 18 Sec.407.Central Valley Project.

19 **TITLE V—WATER RIGHTS PROTECTIONS**

- 20 Sec.501.Protections for State water project contractors.
- 21 Sec.502.Area of origin protections.
- 22 Sec.503.No redirected adverse impacts.
- 23 Sec.504.Effect on State laws.

24 **TITLE VI—MISCELLANEOUS**

- 25 Sec.601.Authorized service area.
- 26 Sec.602.Rescheduled water.
- 27 Sec.603.Fisheries disaster declaration. [PLACEHOLDER]
- 28 Sec.604.Oversight board for Restoration Fund.
- 29 Sec.605.Water operations review panel.
- 30 Sec.606.Contingency in event of continuing resolution for fiscal year 2015.

31

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1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) As established in the Proclamation of a State of Emergency issued by the Governor of  
4 the State on January 17, 2014, the State is experiencing record dry conditions;

5 (2) Extremely dry conditions have persisted in the State since 2012, and the drought  
6 conditions are likely to persist into the future;

7 (3) As of September 2014, the National Weather Service’s forecast does not show a high  
8 likelihood of the State experiencing above-normal precipitation for the remainder of the  
9 calendar year;

10 (4) The water supplies of the State are at record-low levels, as indicated by the fact that  
11 all major Central Valley Project reservoir levels were at 20-35 percent of capacity as of  
12 September 25, 2014;

13 (5) The lack of precipitation has been a significant contributing factor to the 6,091 fires  
14 experienced in the State as of September 15, 2014, and which covered nearly 400,000 acres;

15 (6) According to a study released by the University of California, Davis in July 2014, the  
16 drought has led to the fallowing of 428,000 acres of farmland, loss of \$810 million in crop  
17 revenue, loss of \$203 million in dairy and other livestock value, and increased groundwater  
18 pumping costs by \$454 million. The statewide economic costs are estimated to be \$2.2  
19 billion, with over 17,000 seasonal and part-time agricultural jobs lost;

20 (7) CVPIA Level II water deliveries to refuges have also been reduced by 25% in the  
21 north of Delta region, and by 35% in the south of Delta region;

22 (8) Only one-sixth of the usual acres of rice fields are being flooded this fall, which leads  
23 to a significant decline in habitat for migratory birds and an increased risk of disease at the  
24 remaining wetlands due to overcrowding of such birds;

25 (9) The drought of 2013 through 2014 constitutes a serious emergency that poses  
26 immediate and severe risks to human life and safety and to the environment throughout the  
27 State;

28 (10) The serious emergency described in paragraph (4) requires—

29 (A) immediate and credible action that respects the complexity of the water system  
30 of the State and the importance of the water system to the entire State; and

31 (B) policies that do not pit stakeholders against one another, which history shows  
32 only leads to costly litigation that benefits no one and prevents any real solutions;

33 (11) Federal law (including regulations) directly authorizes expedited decisionmaking  
34 procedures and environmental and public review procedures to enable timely and  
35 appropriate implementation of actions to respond to the type and severity of the serious  
36 emergency described in paragraph (4); and

37 (12) The serious emergency described in paragraph (4) fully satisfies the conditions  
38 necessary for the exercise of emergency decisionmaking, analytical, and public review  
39 requirements under—

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(A) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(B) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(C) water control management procedures of the Corps of Engineers described in section 222.5 of title 33, Code of Federal Regulations (including successor regulations); and

(D) the Reclamation States Emergency Drought Relief Act of 1991 (Public Law 102–250; 106 Stat. 53).

(13) The 2008 smelt biological opinion and 2009 salmonid biological opinion contain reasonable and prudent alternatives to protect listed fish species from being jeopardized by operation of the Central Valley Project and State Water Project and to prevent adverse modification of designated critical habitat;

(14) The effect of those reasonable and prudent alternatives in the biological opinions may restrict the amount of water pumping that can occur to deliver water for agricultural, municipal, industrial, groundwater, and refuge uses in California;

(15) Data on the difference between water demand and reliable water supplies for various regions south of the delta, including the San Joaquin Valley, indicate there is a significant annual gap between reliable water supplies to meet agricultural, municipal and industrial, groundwater, and refuges water needs within the South of Delta and Friant Division of the Central Valley Project and the State Water Project south of the Sacramento-San Joaquin River Delta and north of the Tehachapi mountain range and the demands of those areas. This gap varies depending on the methodology of the analysis performed, but can be represented in the following ways:

**Commented [A1]:** Agencies are verifying the accuracy of the facts within this finding.

(A) For Central Valley Project South-of-Delta water service contractors, if it is assumed that a water supply deficit is the difference in the amount of water available for allocation versus the maximum contract quantity, particularly in more recent years, then the water supply deficits that have developed from 1992 to 2014 as a result of changes besides natural variations in hydrology during this timeframe range between 720,000 and 1,100,000 acre-feet.

(B) For Central Valley Project and State Water Project water service contractors south of the Delta and north of the Tehachapi mountain range, if it is assumed that a water supply deficit is the difference between reliable water supplies, including maximum water contract deliveries, safe yield of groundwater, safe yield of local and surface supplies and long-term contracted water transfers, and water demands, including water demands from agriculture, municipal and industrial and refuge contractors, then the water supply deficit ranges between approximately 2,500,000 to 2,700,000 acre-feet.

(C) The California Water Plan evaluated outcomes under current conditions under 198 combinations of climate and growth scenarios, projecting a range of urban and agricultural reliability into the future. Reliability in this instance is defined as the percentage of years in which demand is sufficiently met by supply. Reliability across a range of futures within the San Joaquin Valley can be presented as:

(i) For the San Joaquin River Hydrologic Region, as defined in the California



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Water Plan:

(I) Urban supply reliability ranges between 90 and 100 percent, with a mean reliability across futures in the high 90<sup>th</sup> percentile; and

(II) Agricultural supply reliability ranges between 70 and 100 percent, with a mean reliability across futures in the mid-90<sup>th</sup> percentile.

(ii) For the Tulare Lake Hydrologic Region, as defined in the California Water Plan:

(I) Urban supply reliability ranges between 70 and 100 percent, with a mean reliability across futures in the mid-90<sup>th</sup> percentile; and

(II) Agricultural supply reliability ranges between 20 and 100 percent, with a mean reliability across futures in the low 70<sup>th</sup> percentile.

(16) Since the issuance of the biological opinions, recent studies have raised questions about the benefits to endangered salmonid populations from water pumping restrictions, including:

Commented [A2]: Agencies are assessing this finding.

(A) Expert panel reviews have concluded that instantaneous water velocities in the tidal Delta affect juvenile salmonids, not “tidally average” flows, as previously assumed. Based on instantaneous water velocity modeling, water exports have a much smaller area of effect than was previously believed;

(B) Tagging studies conducted since 1993 (representing more than 28 million fish) demonstrate that the proportion of Sacramento Basin origin Chinook salmon entrained into the pumping facilities (including pre-screen losses) are on average less than 1/10 of 1%; and

(C) Telemetry studies of Sacramento Basin and San Joaquin Basin origin juvenile Chinook salmon have not demonstrated any significant adverse effect from water exports on fish survival.

(17) Data of pumping activities at the Central Valley Project and State Water Project delta pumps identifies that, on average from Water Year 2009 to Water Year 2014, pumping activity takes 893 delta smelt annually with an authorized take level of 5,003 delta smelt annually according to the biological opinion issued December 15, 2008.

(18) It is worth exploring whether there is a way to implement the biological opinions that would preserve the protections afforded listed fish and simultaneously increase water deliveries to the Central Valley Project and State Water Project without weakening environmental laws or protections.

(19) In 2014, better information exists than was known in 2008 concerning conditions and operations that may or may not lead to high salvage events that jeopardize the fish populations, and what alternative management actions can be taken to avoid jeopardy.

(20) Alternative management strategies, such as trapping and barging juvenile salmon through the Delta, removing non-native species, enhancing habitat, and monitoring fish movement and location in real-time can contribute significantly to protecting and recovering these endangered fish species, and at potentially lower costs to water supplies.

(21) Resolution of fundamental policy questions concerning the extent to which

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application of the Endangered Species Act affects the operation of the Central Valley Project and State Water Project is the responsibility of Congress.

**SEC. 3. DEFINITIONS.**

In this Act:

(1) DELTA.—The term “Delta” means the Sacramento-San Joaquin Delta and the Suisun Marsh, as defined in sections 12220 and 29101 of the California Public Resources Code.

(2) Export Pumping Rates.—The term “export pumping rates” means the rates of pumping at the W.C. “Bill” Jones Pumping Plant and the Harvey O. Banks Pumping Plant, in the southern Delta.

(3) JEOPARDY.—The term “jeopardy” means to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.

(4) LISTED FISH SPECIES.—The term “listed fish species” means listed salmonid species and the Delta smelt.

(5) LISTED SALMONID SPECIES.—The term “listed salmonid species” means natural origin steelhead, natural origin genetic spring run Chinook, and genetic winter run Chinook salmon.

(6) OMR.—The term “OMR” means the Old and Middle River in the Delta.

(7) OMR FLOW OF -5000 CFS.—The term “OMR flow of -5000 cfs” means Old and Middle River flow of negative 5,000 cubic feet per second as measured by—

(A) the smelt biological opinion; and

(B) the salmonid biological opinion.

(8) SALMONID BIOLOGICAL OPINION.—The term “salmonid biological opinion” means the biological opinion issued by the National Marine Fisheries Service on June 4, 2009.

(9) SMELT BIOLOGICAL OPINION.—The term “smelt biological opinion” means the biological opinion on the Long-Term Operational Criteria and Plan for coordination of the Central Valley Project and State Water Project issued by the United States Fish and Wildlife Service on December 15, 2008.

(10) STATE.—The term “State” means the State of California.

**TITLE I—ADJUSTING DELTA SMELT MANAGEMENT  
BASED ON INCREASED REAL-TIME MONITORING AND  
UPDATED SCIENCE**

**SEC. 101. DEFINITIONS.**

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In this title:

(1) DIRECTOR.—The term “Director” means the Director of the United States Fish and Wildlife Service.

(2) DELTA SMELT.—The term “delta smelt” means the fish species with the scientific name *Hypomesus transpacificus*.

(3) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

**SEC. 102. REVISE INCIDENTAL TAKE LEVEL  
CALCULATION FOR DELTA SMELT TO REFLECT NEW  
SCIENCE.**

No later than October 1, 2015, the Director of Fish and Wildlife Service, in cooperation with other federal, state, and local agencies, shall use the best scientific and commercial data available to complete a review and, if warranted, a modification of the incidental take level in the 2008 delta smelt biological opinion that takes into account, among other considerations,—

- (a) salvage information available over at least 18 years;
- (b) updated or more recently developed statistical models;
- (c) updated scientific and commercial data; and
- (d) the most recent information regarding the environmental factors driving delta smelt salvage.

**SEC. 103. FACTORING INCREASED REAL-TIME  
MONITORING AND UPDATED SCIENCE INTO DELTA  
SMELT MANAGEMENT.**

(a) In General.—The reasonable and prudent alternative described in the 2008 delta smelt biological opinion, as amended, and any successor opinions, shall be implemented consistent with current best scientific and commercial data available, and implementation shall be adjusted accordingly as new scientific and commercial data are developed.

(b) Increased Monitoring to Inform Real-time Operations.— Contingent upon funding, the Secretary shall conduct additional surveys, on an annual basis at the appropriate time of the year based on environmental conditions, in collaboration with other delta science interests.

(1) In implementing this section, after seeking public input, the Secretary shall —

- (A) use the most appropriate survey methods for the detection of delta smelt to determine the extent that adult delta smelt are distributed in relation to certain levels of turbidity, or other environmental factors that may influence salvage rate; and

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(B) use results from appropriate survey methods for the detection of delta smelt to determine how the Central Valley Project and State Water Project may be operated more efficiently to minimize salvage while maximizing rates of water export.

(2) During the period beginning on December 1, 2014 and ending March 31, 2015, and in each successive December through March period, if suspended sediment loads enter the Delta from the Sacramento River and the suspended sediment loads appear likely to raise turbidity levels in Old River north of the export pumps from values below 12 Nephelometric Turbidity Units (NTU) to values above 12 NTU, the Secretary shall—

(A) conduct daily monitoring using appropriate survey methods at locations including, but not limited to, the vicinity of Station 902 to determine the extent that adult Delta smelt are moving with turbidity toward the export pumps; and

(B) use results from the monitoring surveys at locations including, but not limited to, the vicinity of Station 902 to determine how increased trawling can inform daily real-time Central Valley Project and State Water Project operations to minimize salvage while maximizing rates of water export.

(c) Periodic Review of Monitoring.—At least once every 5 years, or sooner if the Secretary determines it is appropriate, the Secretary shall—

(1) evaluate whether the monitoring program under subsection (b), combined with other monitoring programs for the Delta, is providing sufficient data to inform Central Valley Project and State Water Project operations to minimize salvage while maximizing rates of water export; and

(2) determine whether the monitoring efforts should be changed in the short- or long-term to provide more useful data.

(d) Delta Smelt Distribution Study.—

(1) IN GENERAL.—No later than January 1, 2016, contingent upon funding, the Secretary, in collaboration with Delta science partners, shall implement new targeted sampling and monitoring specifically designed to understand delta smelt abundance, distribution, and the types of habitat occupied by delta smelt during all life stages.

(2) SAMPLING.—The Delta smelt distribution study shall, at a minimum—

(A) include recording water quality and tidal data;

(B) be designed to understand delta smelt abundance, distribution, habitat use, and movements throughout the Bay Delta during all seasons;

(C) consider areas not routinely sampled by existing monitoring programs, including wetland channels, near-shore water, depths below 35 feet, and shallow-water; and

(D) use the most biologically appropriate survey methods, including sampling

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gear suited to the type of sampling or monitoring.

(e) Scientifically supported implementation of Old and Middle River flow requirements.—In implementing the provisions of the smelt biological opinion, or any successor biological opinion, on reverse flow in the Old and Middle Rivers, the Secretary shall—

(1) consider the relevant provisions of the biological opinion or any successor biological opinion;

(2) manage reverse flow in Old and Middle Rivers as prescribed by the smelt biological opinion, or any successor biological opinion, to minimize water supply reductions for the Central Valley Project and the State Water Project;

(3) document in writing any significant facts about real-time conditions relevant to the determinations of reverse OMR flow rates, including—

(A) whether targeted real-time fish monitoring in Old River pursuant to this section, including monitoring in the vicinity of Station 902, indicates that a significant increase in the salvage of delta smelt is imminent; and

(B) whether near-term forecasts with available salvage models show under prevailing conditions that OMR flow of -5000 cubic feet per second will cause significantly increased take of delta smelt; and

(4) show in writing that any determination to manage OMR reverse flow at rates less negative than -5000 cubic feet per second is necessary to avoid a negative impact on the long-term survival of the Delta smelt, including an explanation of the data examined and the connection between those data and the choice made, after considering:

(A) the findings in paragraph (3);

(B) whether continued project operations over the remainder of the water year would exceed the incidental take level;

(C) the potential effects of entrainment on subsequent smelt abundance, including consideration of the distribution of the population throughout the Delta,

(D) the water temperature,

(E) other factors relevant to the determination; and

(F) whether any alternative measures could have a lesser water supply impact.

(5) for any subsequent biological opinion, make the showing required in paragraph (4) for any determination to manage OMR reverse flow at rates less negative than the upper limit in the biological opinion.

(f) Memorandum of Understanding. No later than December 1, 2014, the Commissioner and the Director will execute a Memorandum of Understanding (MOU) to

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ensure that the smelt biological opinion is implemented in a manner that minimizes water supply losses while complying with applicable laws and regulations. If that MOU alters any procedures set out in the biological opinion, there will be no need to reinitiate consultation if those changes do not have an adverse effect on listed species and the implementation of the MOU would not be a major change to implementation of the biological opinion. Any change to procedures that does not create a new adverse effect to listed species will not alter application of the take exemption in the incidental take statement in the biological opinion under the Endangered Species Act, section 7(o)(2).

## **TITLE II—ENSURING SALMONID MANAGEMENT IS RESPONSIVE TO NEW SCIENCE**

### **SEC. 201. DEFINITIONS.**

In this title:

(1) ASSISTANT ADMINISTRATOR.—The term “Assistant Administrator” means the Assistant Administrator of NOAA Fisheries.

(2) SECRETARY.—The term “Secretary” means the Secretary of Commerce.

### **SEC. 202. REQUIRED SCIENTIFIC STUDIES.**

(a) Trap and Barge Pilot Project to Increase Survivals Through the Delta.—The Assistant Administrator and the Commissioner shall, in collaboration with the U.S. Fish and Wildlife Service, the California Department of Fish and Wildlife and other interested parties, design, permit, implement and evaluate a pilot program to test the efficacy of an experimental trap and barge program to improve survival of juvenile salmonids emigrating from the San Joaquin watershed through the Delta, as further described below.

(1) Within 30 days of enactment, the Assistant Administrator shall convene a working group of the relevant agencies and other interested parties through which to develop and execute a plan for the design, budgeting, implementation and evaluation of such a pilot program, utilizing existing expertise on such trap and barge programs as may be available. Such plan shall detail a schedule and budget for the program, and identify the responsible parties for each element of the program.

(2) The Assistant Administrator shall provide an opportunity for public review and comment on the pilot program and also simultaneously seek an expeditious independent peer review of the program to improve its rigor and likelihood of success.

(3) Upon completion of (2), above, the Assistant Administrator shall complete the necessary design and evaluations of the pilot program and seek such authorizations and permits as may be required for its prompt implementation and evaluation by the Assistant Administrator, the Commissioner or such other parties as they determine most suitable.

(4) Subject to the availability of funding, the Assistant Administrator and the Commissioner shall seek to commence implementation of the pilot program in 2015 or as



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soon thereafter as is possible, and shall conduct such pilot for such period of time as needed to evaluate the efficacy of the program to improve survivals across a range of environmental conditions.

(5) The Assistant Administrator and the Commissioner shall jointly report annually to the Senate Environment and Public Works Committee and the House Committee on Natural Resources their progress in implementing this section, estimated survival rates through the Delta for both juvenile salmonids that were barged through the Delta and those that were not barged, and if survival rates are significantly higher for barged fish as compared to other outmigrating smolts, the Assistant Administrator's and Commissioner's recommendations regarding broadening the pilot program and any relevant recommendations pursuant to section 203.

(b) Tagging studies.

(1) IN GENERAL.—The Assistant Administrator, in collaboration with other delta science partners, shall implement tagging studies, including acoustic telemetry and PIT tagging studies as appropriate, wherein habitat, predators, flow conditions, or other factors are experimentally altered and the behavior and survival of tagged juvenile salmonids are observed. Studies may also be conducted to aid in the understanding of Chinook salmon and steelhead abundance, distribution, and survival.

(2) SAMPLING.—The sampling—

(A) shall include recording water quality and tidal data;

(B) will be designed to aid in the understanding of salmonid abundance, distribution, and movements throughout the Bay Delta, including estimates of through Delta survival from Knights Landing or from Mossdale to Chipps Island; and

(C) will supplement, not supplant, ongoing acoustic tag and coded wire survival studies in the San Joaquin and Sacramento Rivers which the Assistant Administrator determines are crucial for trend monitoring.

**SEC. 203. PROCESS FOR ENSURING SALMONID  
MANAGEMENT IS RESPONSIVE TO NEW SCIENCE.**

(a) General directive. The reasonable and prudent alternative described in the salmonid biological opinion allows for and anticipates adjustments in operating criteria to reflect the best scientific and commercial data currently available, and authorizes efforts to test and evaluate improvements in operations that will meet applicable regulatory requirements and enable improvements in water supply reliability. The Commissioner and the Assistant Administrator are hereby directed to utilize these authorities fully as described below.

(b) Annual reviews of certain operating criteria. No later than December 31, 2015, and at least annually thereafter,

(1) The Commissioner, in consultation with and with the assistance of the Assistant Administrator shall commence annual efforts to examine and identify adjustments to the initiation of Action IV.2.3 pertaining to negative OMR flows, subject to paragraph (5).

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(2) The Commissioner, in consultation with and with the assistance of the Assistant Administrator, shall examine and identify adjustments in the timing, triggers or other operational details relating to the implementation of pumping restrictions in Action IV.2.1 pertaining to the inflow to export requirements, subject to paragraph (5).

(3) Pursuant to the consultation and assessments carried out under paragraphs (1) and (2) of this subsection, the Commissioner shall make recommendations to the Assistant Administrator on adjustments that, in the exercise of the adaptive management provisions of the salmonid biological opinion, can improve water supplies and are consistent with the requirements of applicable law and as further described in subsection (c).

(4) The Commissioner shall implement those adjustments for which the conditions under subsection (c) are met.

(5) The Assistant Administrator and the Commissioner shall review and identify adjustments to water supply restrictions in any successor biological opinion to the salmonid biological opinion, applying the provisions of this section to those water supply restrictions where there are references to Actions IV.2.1 and IV.2.3.

(c) Adjustments that shall be implemented. In receiving the recommendations under subsection (b), the Assistant Administrator shall evaluate the effects of the recommended adjustments on listed species and shall recommend to the Commissioner adjustments for which:

(1) the net effect on listed species is equivalent to those of the underlying criteria, taking into account whatever actions or measures may be implemented in conjunction with the adjustments to mitigate its effects; and

(2) the effects of the adjustment fall within the incidental take authorizations.

(d) Taking into account offsetting species survival benefits from other measures.

(1) When examining opportunities to offset the potential adverse effect of adjustments to operating criteria, the Commissioner and the Assistant Administrator shall take into account the potential salmonid survival improvements that are likely to result from other measures which, if implemented in conjunction with the adjustments, would offset the adverse effects of the adjustments. When considering offsetting measures, the Commissioner and the Assistant Administrator shall consider the type, timing and nature of the adverse effects to specific species and ensure that the measures provide equivalent overall benefits to the listed species in the aggregate, as long as the change in survival rates for each species remains consistent with the Endangered Species Act and implementing regulations.

(2) The offsetting measures could include actions implemented with the support of a substantial contribution from water districts that would benefit from the adjustments.

(e) Framework for examining opportunities to minimize or offset the potential adverse effect of adjustments to operating criteria.—Not later than December 31, 2015, and every five years thereafter, the Assistant Administrator shall, in collaboration with the Director of the California Department of Fish and Wildlife, based on the best scientific and commercial data available and for each listed salmonid species, issue estimates of the increase in through-Delta survival the Secretary expects to be achieved—

(1) with export restrictions as specified by Action IV.2.3 as compared to limiting OMR flow to a fixed rate of -5000 cubic feet per second within the time period Action IV.2.3 is

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applicable, based on a given rate of San Joaquin River inflow to the Delta and holding other relevant factors constant;

(2) with San Joaquin River inflow to export restrictions specified within Action IV.2.1 as compared to the export restrictions in the April/May period imposed by the State Water Resources Control Board decision D-1641, based on a given rate of San Joaquin River inflow to the Delta and holding other relevant factors constant;

(3) by a trap and barge program based on the experience of other systems to the extent they are comparable, and the study described in section 202, as that information becomes available;

(4) through physical habitat restoration improvements;

(5) through predation control programs;

(6) through temporary barriers, the Cross Channel Gates, and other projects affecting flow in the Delta;

(7) by salvaging fish that may be entrained near the entrance to Clifton Court Forebay; and

(8) by any other management measures that may provide equivalent or better benefits for listed species with improvements to water supplies.

(f) Survival estimates to be quantitative to the maximum extent feasible.

(1) The Assistant Administrator shall make these estimates and determinations quantitatively to the maximum extent feasible, such as a range of percentage increases in through-Delta survival that could result from the management measures, and if the scientific information is lacking for quantitative estimates, shall do so on qualitative terms based upon the best available science.

(2) If the Assistant Administrator provides qualitative estimates of the benefits to the species from one or more management measures, the Secretary shall, to the maximum extent feasible, rank the management measures described in subsection (e) in terms of their most likely expected contribution to increased through-Delta survival relative to the other measures.

(3) If at the time the Assistant Administrator conducts the analysis under subsection (b), the Secretary has not issued the estimates of increased through-Delta survival benefits from different management measures pursuant to subsection (e), the Secretary shall compare the benefits to the species from different management measures based on the best scientific and commercial data available at the time.

(g) Comparison of adverse consequences for alternative management measures of equal benefit to the salmon.—

(1) For the purposes of this subsection—

(A) The alternative management measure or combination of alternative management measures identified in paragraph (2) shall be known as the “equivalent alternative measure.”

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(B) The existing measure or measures identified in subparagraphs (2)(A),(B),(C), or (D) shall be known as the “equivalent existing measure.”

(C) An “equivalent increase in through-Delta survival rates for listed salmonid species” shall mean an increase in through-Delta survival rates that is equivalent when considering the change in through-Delta survival rates for the listed salmonid species in the aggregate, and not necessarily the same change for each individual species, as long as the change in survival rates for each species remains consistent with the Endangered Species Act and implementing regulations.

(2) As part of the reviews of operating criteria pursuant to subsection (b), the Assistant Administrator shall determine whether any alternative management measures or combination of alternative management measures listed in subsection (e)(3) through (8) would provide an increase in through-Delta survival rates for listed salmonid species that is equivalent to the increase in through-Delta survival rates for listed salmonid species from the following:

(A) with export restrictions as specified by Action IV.2.3, as compared to limiting OMR flow to a fixed rate of -5000 cubic feet per second within the time period Action IV.2.3 is applicable;

(B) with export restrictions as specified by Action IV.2.3, as compared to a modification of Action IV.2.3 that would provide additional water supplies, other than that described in subparagraph (A);

(C) with San Joaquin River inflow to export restrictions specified within Action IV.2.1, as compared to the export restrictions in the April/May period imposed by the State Water Resources Control Board decision D-1641, or

(D) with San Joaquin River inflow to export restrictions specified within Action IV.2.1, as compared to a modification of Action IV.2.1 that would provide additional water supplies, other than that described in subparagraph (C).

(3) If the Assistant Administrator identifies an equivalent alternative measure pursuant to paragraph (2), the Assistant Administrator shall determine whether

(A) it is technically feasible and within federal jurisdiction to implement the equivalent alternative measure, and

(B) the adverse consequences of doing so are less than the adverse consequences of the equivalent existing measure, including a concise evaluation of the adverse consequences to other affected interests.

(4) If the Assistant Administrator makes the findings in subparagraph (3)(A) and (B), the Assistant Administrator and the Commissioner shall adjust the operating criteria in the salmonid biological opinion pursuant to this subsection to implement the equivalent alternative measure in place of the equivalent existing measure in order to increase water supplies to the greatest extent possible while maintaining a net combined effect of equivalent through-Delta survival rates for the listed salmonid species.

(h) Tracking adverse effects beyond the range of effects accounted for in the salmonid biological opinion and coordinated operation with smelt biological opinion.

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(1) Among the adjustments to the operational criteria considered through the adaptive management process under this section, the Assistant Administrator and the Commissioner shall

(A) Evaluate the effects on listed salmonid species and water supply of the potential adjustment to operational criteria described in subparagraph (B); and

(B) Consider requiring that before some or all of the provisions of Actions IV.2.1. or IV.2.3 are imposed in any specific instance, the Assistant Administrator show that the implementation of these provisions in that specific instance is necessary to avoid additional adverse effects upon listed salmonid species beyond the range of effects analyzed and accounted for in the salmonid biological opinion

(2) The Assistant Administrator, the Director and the Commissioner, in coordination with State officials as appropriate, shall establish operational criteria to coordinate management of OMR flows under the smelt and salmonid biological opinions, in order to take advantage of opportunities to provide additional water supplies from the coordinated implementation of the biological opinions.

(i) Real-Time Monitoring and Management. The Assistant Administrator and the Commissioner shall, through the NMFS adaptive management salmonid biological opinion provisions, analyze whether date-certain triggers that limit OMR reverse flow to -5000 cubic feet per second could be adjusted to instead use real-time migration information on salmonids. If the analysis shows that the use of real-time information to trigger OMR flow limitations would improve water supply without causing significant adverse effects to Winter-run Chinook salmon, then such real-time management triggers shall be implemented.

## **SEC. 204. PILOT PROGRAM TO PROTECT NATIVE ANADROMOUS FISH IN THE STANISLAUS RIVER.**

(a) Establishment of Non-native Predator Fish Removal Program. The Assistant Administrator, in consultation with the United States Fish and Wildlife Service and the California Department of Fish and Wildlife, shall develop and conduct a pilot non-native predator fish removal program to remove non-native striped bass, smallmouth bass, largemouth bass, black bass, and other non-native predator fishes in and around the Bay Delta, including the Stanislaus River, contingent upon funding. The pilot program shall--

(1) be scientifically based;

(2) include methods to quantify the number and size of predator fishes removed each year, the impact of such removal on the overall abundance of predator fishes, and the impact of such removal on the populations of juvenile anadromous fish found in the Stanislaus River and elsewhere by, among other things, evaluating the number of juvenile anadromous fish that migrate past the rotary screw trap located at Caswell;

(3) among other methods, use wire fyke trapping, portable resistance board weirs, and boat electrofishing, which are among the most effective predator collection techniques that minimize effects to native anadromous fish;

(4) be developed, including the application for all necessary scientific research and species enhancement permits under section 10(a)(1) of the Endangered Species Act of 1973

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(16 U.S.C. 1539(a)(1)), for the performance of the pilot program, not later than 6 months after the date of the enactment of this Act;

(5) be implemented on the first business day of the calendar year following the issuance of all necessary scientific research, species enhancement permits, and funding needed to begin the pilot program; and

(6) be implemented for a period of seven consecutive calendar years.

(b) Management. The Assistant Administrator is authorized and encouraged to enter into agreements with interested local water districts to jointly develop, implement and evaluate this pilot program. Such parties shall work collaboratively to ensure the performance of the pilot program, and shall discuss and agree upon, among other things, changes in the structure, management, personnel, techniques, strategy, data collection, reporting and conduct of the pilot program.

(c) Conduct.—

(1) IN GENERAL.—By agreement between the Assistant Administrator and the participating districts, the pilot program may be conducted by their own personnel, qualified private contractors hired by the districts, personnel of, on loan to, or otherwise assigned to NOAA Fisheries, or a combination thereof.

(2) PARTICIPATION BY NOAA FISHERIES.—In the event the districts elect to conduct the program using their own personnel or qualified private contractors hired by them, the Commissioner has the option to assign an employee of, on loan to, or otherwise assigned to NOAA Fisheries, to be present for all activities performed in the field. Such presence shall ensure compliance with the agreed upon elements specified in subsection (b). The districts shall pay 100 percent of the cost of such participation as specified in subsection (d).

(3) TIMING OF ELECTION.—The districts shall notify the Assistant Administrator of their election on or before October 15 of each calendar year of the pilot program, which election shall apply to the work performed in the subsequent calendar year.

(d) Funding.—

(1) ANNUAL FUNDING.—The Commissioner, the Assistant Administrator, and the participating districts shall develop a budget and funding plan for the pilot project that will allocate costs appropriately amongst the participating entities. On or before December 1 of each year of the pilot program, the Commissioner shall submit to the districts an estimate of the cost to be incurred by the Bureau of Reclamation in the following calendar year, if any, including the cost of any data collection and posting under subsection (e). If an amount equal to the estimate is not provided to the Assistant Administrator by the districts on or before December 31 of each year, (a) NOAA Fisheries shall have no obligation to conduct the pilot program activities otherwise scheduled, and (b) the districts shall be prohibited from conducting any aspect of the pilot program, until full payment is made by the districts.

(2) ACCOUNTING.—On or before September 1 of each calendar year, the Assistant Administrator shall provide an accounting of the prior calendar year's expenses to the participating entities. If the estimate paid by the districts was less than the actual costs incurred by NOAA Fisheries, the districts shall have until September 30 of that calendar year to pay the difference to the fund identified by the Assistant Administrator in subsection



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(d)(1), or NOAA Fisheries shall have no obligation to conduct the pilot program activities otherwise scheduled. If the estimate paid by the districts was greater than the actual costs incurred by NOAA Fisheries, then a credit shall be provided to the districts, which shall be deducted from the estimate payment the districts must make for the work performed by NOAA Fisheries, if any, in the next calendar year.

(e) Reporting and Evaluation.—

(1) IN GENERAL.—On or before the 15th day of each month, the Assistant Administrator shall post on the website of NOAA Fisheries a tabular summary of the raw data collected in the prior month.

(2) REPORT.—On or before June 30 of the calendar year following the completion of the program, the Assistant Administrator and districts shall jointly submit a report for peer review that—

(A) discusses the findings and conclusions of the pilot program;

(B) synthesizes the data collected under paragraph (1); and

(C) makes recommendations for further study and action.

(f) Permits Process.—

(1) Not later than one year after filing of an application by the Assistant Administrator and the districts, the Secretary of the Interior, the Secretary of Commerce, or both, as appropriate, shall issue all necessary scientific research and species enhancement permits under section 10(a)(1) of the Endangered Species Act (16 U.S.C. 153(9)(a)(1)), for the performance of the pilot program.

(2) All permits issued shall be in the name of NOAA Fisheries and the participating districts.

(3) Districts may delegate the authority to administer the permit authority to any qualified private contractor retained in accordance with subsection (c).

(g) Emergency Environmental Reviews.—To expedite this environmentally beneficial program for the conservation of threatened and endangered species, the Secretary of the Interior shall consult with the Council on Environmental Quality in accordance with Section 1506.11 of title 40, Code of Federal Regulations (including successor regulations) to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 for this section.

(h) Definitions.—For the purposes of this section:

(1) COMMISSIONER.—The term `Commissioner' means the Commissioner of the Bureau of Reclamation.

(2) DISTRICTS.—The term `districts' means the Oakdale Irrigation District and the South San Joaquin Irrigation District.

(3) PILOT PROGRAM.—The term `program' means the pilot non-native predator removal program established under this section.

(i) Sunset.—The authorities provided under this section shall expire seven years after the implementation of the pilot program.

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**SEC. 205. CALFED INVASIVE SPECIES PILOT PROJECTS  
IN THE SACRAMENTO-SAN JOAQUIN BAY DELTA AND  
ITS TRIBUTARIES.**

(a) FINDINGS.—Congress finds that—

(1) The Sacramento-San Joaquin Bay Delta and its Tributaries—

(A) is one of the largest and most diverse estuaries in the United States,

(B) is a natural treasure and a vital link in California’s water system, and

(C) has native biodiversity important to the ecological and economic systems of California, including water deliveries to agriculture, municipalities and to the environment and fisheries industries, and

(D) has river tributaries important for rearing of salmon and steelhead smolts which experience a high level of predation from non-native species.

(2) Past, present and future introductions of invasive species are and will be a major factor in the decline of native pelagic and anadromous endangered or threatened species in the Sacramento–San Joaquin Bay Delta and its tributaries.

(3) More than 250 nonnative aquatic and plant species have been introduced into the Delta and its tributaries; of these, at least 185 species have become established and have altered the Sacramento-San Joaquin Bay Delta watershed’s ecosystem.

(4) The Bay Delta Conservation Plan, the Recovery Plan for the Evolutionarily Significant Units of Sacramento River Winter-run Chinook Salmon and Central Valley Spring-run Chinook Salmon and the Distinct Population Segment of the Central Valley Steelhead, the Recovery Plan for the Sacramento-San Joaquin Delta Native Fishes, and the multiple 5 year reviews of those plans all highlight that introduced nonnative invasive species are a significant factor in the decline of native fish species. These nonnative species, which include invasive aquatic vegetation, predators, and competitors, directly or indirectly cause biological stress for pelagic and anadromous endangered or threatened fish species in the Sacramento-San Joaquin Bay-Delta and its tributaries.

(5) If threats by nonnative species to native fish species are not addressed, there is a probability that native species of the Sacramento-San Joaquin Bay-Delta watershed’s pelagic and anadromous community will go extinct.

(6) The CALFED legislation (Public Law 108-361) authorized a program to prevent, control, and eradicate invasive species, but it has not been implemented to date.

(7) A focused pilot program needs to be conducted within the Delta and river tributaries to reduce threats to native listed species by nonnative species. Reducing nonnative stressors on native listed species will contribute to both native listed species recovery and lowering the impact on downstream water users as those native listed species recover.

(b) PILOT PROJECTS TO IMPLEMENT CALFED INVASIVE SPECIES PROGRAM.

(1) Not later than January 1, 2016, the Secretary of the Interior, in collaboration with the Secretary of Commerce and the Director of the California Department of Fish and Wildlife,

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shall begin pilot projects to implement the invasive species program, including prevention, control and eradication authorized pursuant to Section 103(d)(6)(A)(iv) of Public Law 108-361. The pilot projects shall:

(A) seek to reduce invasive aquatic vegetation, predators, and other competitors which are major factors in the decline of native listed pelagic and anadromous species that occupy the Sacramento and San Joaquin Rivers and their tributaries and the Sacramento-San Joaquin Bay-Delta; and

(B) address how to remove, reduce, or control the effects of species including: Asiatic clams, silversides, gobies, Brazilian water weed, largemouth bass, smallmouth bass, striped bass, crappie, bluegill, white and channel catfish, and brown bullheads.

(2) The Secretary of the Interior's efforts shall consist of the following phases:

(A) Phase 1. The Secretary of the Interior shall convene a panel of experts, including experts recommended by the State of California, to:

- (i) Identify the non-native species having the greatest impact on the viability of native pelagic and anadromous native listed species; and
- (ii) Identify the non-native species for which actions to reduce or control the population is determined to be possible; and
- (iii) Design a study to reduce the non-native species identified in clauses (i) and (ii) and prepare a cost estimate to implement this study.

(B) Phase 2. The Secretary of the Interior shall test the general viability of nonnative reduction methods, including either direct predator removal or alteration of channel conditions, or some combination thereof, through pilot projects at multiple sites in addition to the projects on the Stanislaus River pursuant to Section 204, including known hotspots of predator aggregation or activity, such as:

- (i) Clifton Court Forebay,
- (ii) Central Valley Project intakes,
- (iii) Head of Old River,
- (iv) Georgiana Slough,
- (v) Old and Middle Rivers,
- (vi) Franks Tract,
- (vii) Paintersville Bridge,
- (viii) individual river tributaries important for wild populations of anadromous species listed as threatened or endangered under the Endangered Species Act of 1973,
- (ix) Human-made submerged structures, and
- (x) Salvage release sites.

(C) Phase 3. If it is feasible to do so, the Secretary of the Interior shall implement nonnative reduction methods at a larger number of sites, incorporating information learned during the first and second phase.

**Commented [A3]:** Awaiting feedback from the agencies on whether the experts in an existing predation workshop would address the items outlined in clauses (i) through (iii) of subparagraph (A) in the proposed text.

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(3) The Secretary of the Interior shall collect data associated with the implementation of the projects above, and shall specifically collect data on the impact on

(A) pelagic and anadromous species listed as threatened or endangered under the Endangered Species Act of 1973,

(B) water quality, and

(C) water supply.

(4) After assessing the data described in subparagraph (2), the Secretary of the Interior, in collaboration with the Secretary of Commerce and the Director of the California Department of Fish and Wildlife, shall, if appropriate, annually recommend revisions to the reasonable and prudent alternatives contained in the salmonid biological opinion and the smelt biological opinion, or other administrative federal requirements governing the operation of the Central Valley Project and the State Water Project, that are likely to produce additional fishery, water quality, and water supply benefits.

(c) IMPLEMENTATION. The Secretary of the Interior shall implement the CALFED program described in subpart (b) for at least a period of seven consecutive years beginning on the date of implementation.

(d) REPORTING REQUIREMENTS. The Secretary of the Interior shall provide reports to the Senate Committee on Environment and Public Works and the House Committee on Natural Resources on the following:

(1) No later than January 1, 2016, a description of the projects described in subpart (b), including the application for all necessary scientific research and species enhancement permits under section 10(a) (1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)), and for the performance of the CALFED invasive species Program.

(2) Upon the completion of Phase 1 as described in subsection (b)(1)(A), a report describing its implementation and cost effectiveness.

(3) Two years after the project begins, a report describing the progress of the eradication of the nonnative species in the Sacramento-San Joaquin Bay-Delta and its tributaries and how such efforts have helped the Recovery Plans for endangered and threatened Anadromous and Pelagic Species in the Sacramento-San Joaquin Bay-Delta watershed and the associated cost effectiveness of each control measure.

(4) After the pilot projects are complete, a report describing the results of the program, including recommendations on whether the program should be continued, how the program may be taken to full scale in the most cost effective manner, and how a mitigation program for the Central Valley Project allowable under section 10(a)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)) could be implemented.

(e) EMERGENCY ENVIRONMENTAL REVIEWS. To expedite this environmentally beneficial program for the conservation of threatened and endangered species, the Secretary of the Interior shall consult with the Council on Environmental Quality in accordance with section 1506.11 of title 40, Code of Federal Regulations (including successor regulations) to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 for this program.

**SEC. 206. MARK FISHERY AND HARVEST  
MANAGEMENT.**

To minimize the impact of harvest and project operations on salmonids, contribute to recovery of stocks of endangered or threatened species, improve management of fish stocks of both hatchery and natural origins, and to minimize risk of a natural origin fall Chinook listing under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), the Assistant Administrator shall

(1) in partnership with the Director of the California Department of Fish and Wildlife and persons responsible for funding Central Valley hatcheries, convene an independent science panel within 60 days of enactment of this Act to follow up on the 2012 California Hatchery Scientific Review Group's recommendations by providing an assessment of costs and benefits associated with marking, with tagging, and with a program that combines in some way marking and tagging Central Valley hatchery produced fall Chinook. The Assistant Administrator shall ensure that the independent science panel—

(A) Includes an appropriate number of scientific experts as determined and appointed by the Assistant Administrator, and an equal number of scientific experts selected by entities responsible for funding California salmon mitigation hatcheries;

(B) Considers and gives equal weight to both inland and ocean monitoring and management needs, including harvest.

(C) Completes the review by December 31, 2015.

(2) assess and implement harvest management strategies by October 1, 2018 to provide better protection for sensitive Chinook stocks while still allowing for harvest of hatchery fall Chinook.

**SEC. 207. NEW ACTIONS TO BENEFIT CENTRAL  
VALLEY SALMONIDS.**

Not later than March 1, 2016, under similar terms and conditions as successful United States Fish and Wildlife Service programs on Clear Creek and Battle Creek, the Director, in collaboration with the Director of the California Department of Fish and Wildlife, the Commissioner of the Bureau of Reclamation, or both, shall issue necessary permits and otherwise facilitate the deployment of temporary in-river structures—

(1) to protect and grow natural origin spring Chinook populations by blocking access to hatchery origin fall Chinook; and

(2) to prevent hatchery origin Chinook salmon and steelhead from reaching spawning grounds where the species will compete for spawning with natural origin fish listed under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

**TITLE III—OPERATIONAL FLEXIBILITY AND DROUGHT  
RELIEF**

**SEC. 301. FINDINGS.**

Congress finds that—

(1) Based on the congressional findings in Sec. 2 of this Act, it is appropriate and necessary for federal agencies to exercise the maximum amount of flexibility provided to them under the applicable laws and regulations to maximize delivery of water supplies while providing the same or better levels of protection for species.

**SEC. 302. DEFINITIONS.**

In this title:

(1) **CENTRAL VALLEY PROJECT.**—The term “Central Valley Project” has the meaning given the term in section 3403 of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4707).

(2) **KLAMATH PROJECT.**—The term “Klamath Project” means the Bureau of Reclamation project in the States of California and Oregon, as authorized under the Act of June 17, 1902 (32 Stat. 388, chapter 1093).

(3) **RECLAMATION PROJECT.**—The term “Reclamation Project” means a project constructed pursuant to the authorities of the reclamation laws and whose facilities are wholly or partially located in the State.

(4) **SECRETARIES.**—The term “Secretaries” means—

(A) the Administrator of the Environmental Protection Agency;

(B) the Secretary of Agriculture;

(C) the Secretary of Commerce; and

(D) the Secretary of the Interior.

(5) **STATE WATER PROJECT.**—The term “State Water Project” means the water project described by California Water Code section 11550 et seq., and operated by the California Department of Water Resources.

**SEC. 303. OPERATIONAL FLEXIBILITY IN TIMES OF  
DROUGHT.**

(a) **Water Supplies.**—

(1) **IN GENERAL.**—In response to a declaration of a state of drought emergency by the Governor of California and for the period of time such a drought declaration remains in effect, the Secretaries shall provide the maximum quantity of water supplies practicable to Central Valley Project agricultural, municipal and industrial, and refuge service and repayment contractors, State Water Project contractors, and any other tribe, locality or municipality in the State, by approving, consistent with applicable laws (including



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regulations), projects and operations to provide additional water supplies as quickly as practicable based on available information to address the emergency conditions.

(2) APPLICATION.—Paragraph (1) applies to projects or operations involving the Klamath Project if the projects or operations would benefit Federal water contractors in the State.

(b) Administration.—In carrying out subsection (a), the Secretaries shall, consistent with applicable laws (including regulations)—

(1) issue all necessary permit decisions under the authority of the Secretaries not later than 30 days after the date on which the Secretaries receive a completed application from the State to place and use temporary barriers or operable gates in Delta channels to improve water quantity and quality for the State Water Project and the Central Valley Project south of Delta water contractors and other water users, on the condition that the barriers or operable gates—

(A) provide benefits for species protection and in-Delta water user water quality; and

(B) are designed so that formal consultations under section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) are not necessary;

(2) require the Director of the United States Fish and Wildlife Service and the Commissioner of Reclamation—

(A) to complete, not later than 30 days after the date on which the Director or the Commissioner receives a complete written request for water transfer associated with voluntarily fallowing nonpermanent crops in the State, all requirements under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) necessary to make final permit decisions on the request; and

(B) to grant any water transfer request described in subparagraph (A) to maximize the quantity of water supplies available for nonhabitat uses, on the condition that the fallowing and associated water transfer are in compliance with applicable Federal laws (including regulations);

(3) adopt a 1:1 inflow to export ratio for the increment of increased flow of the San Joaquin River, as measured as a 3-day running average at Vernalis during the period beginning on April 1, and ending on May 31, resulting from voluntary transfers and exchanges of water supplies, on the condition that a proposed transfer or exchange under this paragraph may only proceed if the Secretary of the Interior determines that the environmental effects of the proposed transfer or exchange are consistent with effects permissible under applicable law (including regulations), and Delta conditions are suitable to allow movement of the transfer water through the Delta consistent with Reclamation's permitted rights; and

(4) Provide additional priority for eligible WaterSMART projects that address drought conditions including projects that—

(A) provide emergency drinking and municipal water supplies to localities in a quantity necessary to meet minimum public health and safety needs;

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(B) prevent the loss of permanent crops;

(C) minimize economic losses resulting from drought conditions; or

(D) provide innovative water conservation tools and technology for agriculture and urban water use that can have immediate water supply benefits.

(c) Accelerated Project Decision and Elevation.—

(1) IN GENERAL.— On request by the Governor of the State, the heads of Federal agencies shall use the expedited procedures under this subsection to make final decisions relating to a Federal project or operation if the project’s or operation’s purpose is to provide relief for emergency drought conditions pursuant to subsections (a) and (b).

(2) REQUEST FOR RESOLUTION.—

(A) IN GENERAL.—On request by the Governor of the State, the head of a Federal agency referenced in paragraph (1), or the head of another Federal agency responsible for carrying out a review of a project, as applicable, the Secretary of the Interior shall convene a final project decision meeting with the heads of all relevant Federal agencies to decide whether to approve a project to provide relief for emergency drought conditions.

(B) MEETING.—The Secretary of the Interior shall convene a meeting requested under subparagraph (A) not later than 7 days after the date on which the meeting request is received.

(3) NOTIFICATION.—On receipt of a request for a meeting under paragraph (2), the Secretary of the Interior shall notify the heads of all relevant Federal agencies of the request, including information on the project to be reviewed and the date of the meeting.

(4) DECISION.—Not later than 10 days after the date on which a meeting is requested under paragraph (2), the head of the relevant Federal agency shall issue a final decision on the project, subject to subsection (e)(2).

(5) MEETING CONVENED BY SECRETARY.—The Secretary of the Interior may convene a final project decision meeting under this subsection at any time, at the discretion of the Secretary, regardless of whether a meeting is requested under paragraph (2).

(d) Application.—To the extent that a Federal agency, other than the agencies headed by the Secretaries, has a role in approving projects described in subsections (a) and (b), this section shall apply to those Federal agencies.

(e) Limitation.—Nothing in this section authorizes the heads of applicable Federal agencies to approve projects—

(1) that would otherwise require congressional authorization; or

(2) without following procedures required by applicable law.

(f) 2015 Drought Plan. The Secretaries of Commerce and the Interior, in consultation with appropriate State officials, shall develop a drought operations plan for 2015 that is consistent with the provisions of this section and other provisions of this Act intended to provide additional water supplies that could be of assistance during the current drought.

**SEC. 304. OPERATION OF CROSS-CHANNEL GATES.**

(a) In General.—The Secretary of Commerce and the Secretary of the Interior shall jointly—

(1) authorize and implement activities to ensure that the Delta Cross Channel Gates remain open to the maximum extent practicable using findings from the United States Geological Survey on diurnal behavior of juvenal salmonids, timed to maximize the peak flood tide period and provide water supply and water quality benefits for the duration of the drought emergency declaration of the State, consistent with operational criteria and monitoring criteria developed pursuant to the Order Approving a Temporary Urgency Change in License and Permit Terms in Response to Drought Conditions of the California State Water Resources Control Board, effective January 31, 2014 (or a successor order) and other authorizations associated with it;

(2) with respect to the operation of the Delta Cross Channel Gates described in paragraph (1), collect data on the impact of that operation on—

(A) species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(B) water quality; and

(C) water supply;

(3) consistent with knowledge gained from activities carried out during 2014, collaborate with the California Department of Water Resources to install a deflection barrier at Georgiana Slough in coordination with Delta Cross Channel Gate diurnal operations to protect migrating salmonids;

(4) evaluate the combined salmonid survival in light of activities carried out pursuant to paragraphs (1) through (3) in deciding how to operate the Delta Cross Channel gates to enhance salmonid survival and water supply benefits; and

(5) not later than May 15, 2015, submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives a written report on the extent to which the gates are able to remain open.

(b) Recommendations.—After assessing the information collected under subsection (a), the Secretary of the Interior shall recommend revisions to the operation of the Delta Cross-Channel Gates, to the Central Valley Project, and to the State Water Project, including, if appropriate, any reasonable and prudent alternative contained in the biological opinion issued by the National Marine Fisheries Service on June 4, 2009, that are likely to produce fishery, water quality, and water supply benefits. The Secretary shall also coordinate with the State Water Resources Control Board to seek consistent direction for the operation of the Delta Cross-Channel Gates under federal and state law, including Water Right Decision 1641.

**SEC. 305. FLEXIBILITY FOR EXPORT/INFLOW RATIO.**

In response to the declaration of a state of drought emergency by the Governor of California and for the period of time such a drought declaration remains in effect, the Commissioner of the Bureau of Reclamation shall continue to vary the averaging period of the Delta Export/Inflow ratio pursuant to the California State Water Resources Control Board decision D1641, approved

**Commented [A4]:** Agencies are investigating the feasibility of diurnal operations.

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in the March Temporary Urgency Change Order—

(1) to operate to a 35 percent Export/Inflow ratio with a 3 day averaging period on the rising limb of a Delta inflow hydrograph; and

(2) to operate to a 14 day averaging period on the falling limb of the Delta inflow hydrograph.

**SEC. 306. EMERGENCY ENVIRONMENTAL REVIEWS.**

To minimize the time spent carrying out environmental reviews and to deliver water quickly that is needed to address emergency drought conditions in the State during the duration of an emergency drought declaration, the head of each applicable Federal agency shall, in carrying out this Act, consult with the Council on Environmental Quality in accordance with section 1506.11 of title 40, Code of Federal Regulations (including successor regulations), to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) during the emergency.

**SEC. 307. PRIORITIZING STATE REVOLVING FUNDS DURING DROUGHTS.**

(a) In General.—This section shall apply for each of the fiscal years during which an emergency drought declaration of the State is in effect.

(b) The Administrator of the Environmental Protection Agency, in implementing the processes and programs under the State water pollution control revolving funds established under title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) and the State drinking water treatment revolving loan funds established under section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12), shall, for those projects that are eligible to receive assistance under section 603 of the Federal Water Pollution Control Act (33 U.S.C. 1383) or section 1452(a)(2) of the Safe Drinking Water Act (42 U.S.C. 300j–12(a)(2)),

(1) issue a determination of waivers within 30 days of the conclusion of the informal public comment period pursuant to section 436(c) of title IV of division G of Public Law 113–76; and

(2) authorize, at the request of the State, 40-year financing for assistance under section 603(d)(2) of the Federal Water Pollution Control Act (33 U.S.C. 1383(d)(2)) or section 1452(f)(2) of the Safe Drinking Water Act (42 U.S.C. 300j–12(f)(2)).

(c) Effect of Section.—Nothing in this section authorizes the Administrator of the Environmental Protection Agency to modify any funding allocation, funding criteria, or other requirement relating to State water pollution control revolving funds established under title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) and the State drinking water treatment revolving loan funds established under section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12) for any other State.

**SEC. 308. INCREASED FLEXIBILITY FOR REGULAR PROJECT OPERATIONS.**

The Secretaries shall, consistent with applicable laws (including regulations)—

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(1) to the maximum extent practicable, based on the availability of water and without causing land subsidence or violating water quality standards—

(A) help meet the contract water supply needs of Central Valley Project refuges through the improvement or installation of water conservation measures, water conveyance facilities, and wells to use groundwater resources, on the condition that those activities may only be accomplished by using funding made available under the Water Assistance Program or the WaterSMART program of the Department of the Interior; and

(B) make available to Central Valley Project contractors a quantity of Central Valley Project surface water obtained from the activities carried out under subparagraph (A);

(2) contingent upon funding, in coordination with the Secretary of Agriculture, enter into an agreement with the National Academy of Sciences to conduct a comprehensive study, to be completed not later than 1 year after the date of enactment of this Act, on the effectiveness and environmental impacts of saltcedar biological control efforts on increasing water supplies and improving riparian habitats of the Colorado River and its principal tributaries, in the State and elsewhere;

(3) in coordination with the California Department of Water Resources and the California Department of Fish and Wildlife, implement offsite upstream projects in the Delta and upstream Sacramento River and San Joaquin basins that offset the effects on species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) due to activities carried out pursuant this Act, as determined by the Secretaries;

(4) manage reverse flow in the Old and Middle Rivers as prescribed by the biological opinions issued by the United States Fish and Wildlife Service on December 15, 2008, for Delta smelt and by the National Marine Fisheries Service on June 4, 2009, for salmonids, or any successor biological opinions, to minimize water supply reductions for the Central Valley Project and the State Project, and issue guidance no later than December 31, 2015 directing their employees to take all steps necessary to manage flow in accordance with this paragraph;

(5) as soon as practicable after the date of enactment of this Act and pursuant to existing authority available to the Secretary of the Interior, participate in, issue grants, or otherwise provide funding for pilot projects to increase water in reservoirs in regional river basins experiencing extreme, exceptional, or sustained drought that have a direct impact on the water supply of the State, including the Colorado River Basin, on the condition that any participation, grant, or funding by the Secretary of the Interior with respect to the Upper Division shall be with or to the respective State; and

(6) use all available scientific tools to identify any changes to real-time operations of the Bureau of Reclamation, State, and local water projects that could result in the availability of additional water supplies.

**SEC. 309. TEMPORARY OPERATIONAL FLEXIBILITY  
FOR FIRST FEW STORMS OF 2015 WATER YEAR.**

(a) Findings:

(1) During the 2014 water year, operations of the Central Valley Project and the State Water Project, the incidental take of adult Delta smelt was zero; of juvenile Delta smelt, 78 (7.7% of the incidental take limit); of winter run chinook, 339 (1.4% of the incidental take limit); of spring run chinook, zero; and of steelhead, 261 (8.7% of the incidental take limit).

(2) The Central Valley Project and State Water Project exceeded a Old and Middle River flow of -5,000 cubic feet per second over a 14-day average for brief periods after three storm events in February and March 2014, as a result of increased pumping, but did not cause substantially increased take of smelt or salmon.

(3) Hydrological conditions in dry years, such as the 2014 water year, have not triggered water pumping restrictions pursuant to the 2008 smelt biological opinion.

(4) The Secretaries should be allowed more flexibility to increase pumping levels without causing significant risk to the listed species or weakening other environmental protections.

(5) Given California's severe drought conditions, significant groundwater withdrawals for irrigation due to lack of surface water supplies, and the depletion of water supplies in reservoirs, it is imperative that the Secretaries exercise the flexibility provided herein to capture the maximum amount of storm flows when and if they occur in the 2015 water year, and provide for the diversion of those supplies to the Central Valley Project and State Water Project so that farms, businesses, and homes in drought-stricken areas will have an opportunity to bolster their meager supplies when water is available.

(b) In general. Consistent with avoiding additional adverse effects upon listed fish species beyond the range of those authorized under the Endangered Species Act and other environmental protections under subsection (e), the Secretaries shall authorize the Central Valley Project and the State Water Project, combined, to operate at levels that result in Old and Middle River flows at up to -7500 cubic feet per second (based on United States Geological Survey gauges on Old and Middle Rivers) daily average for up to 21 cumulative days after October 1, 2014, as described in subsection (c).

(c) Days of temporary operational flexibility. The temporary operational flexibility described in subsection (b) shall be authorized on days that the California Department of Water Resources determines the daily average river flow of the Sacramento River is at, or above, 17,000 cubic feet per second as measured at the Sacramento River at Freeport gauge maintained by the United States Geologic Survey.

(d) Compliance with ESA authorizations. In carrying out this section, the Secretaries may continue to impose any requirements under the biological opinions during any period of temporary operational flexibility as they determine are reasonably necessary to avoid additional adverse effects on listed fish species beyond the range of those authorized under the Endangered Species Act.

(e) Other environmental protections.



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(1) The Secretaries' actions under this section shall be consistent with applicable regulatory requirements under state law, including State Water Resources Control Board Decision 1641, as it may be implemented in any given year;

(2) During the first flush of sediment out the Delta during the 2015 water year, OMR flow may be managed at rates less negative than -5000 cubic feet per second for a minimum duration to avoid movement of adult delta smelt (*Hypomesus transpacificus*) to areas in the southern Delta that would be likely to increase entrainment at Central Valley Project and State Water Project pumping plants;

(3) This section shall not have any effect on the applicable requirements of the salmonid biological opinion from April 1 to May 31, unless the Secretary of Commerce finds that some or all of such applicable requirements may be adjusted during this time period to provide emergency water supply relief without resulting in additional adverse effects beyond those authorized under the Endangered Species Act.

(4) During operations under this section, the Commissioner of Reclamation, in coordination with the Fish and Wildlife Service, National Marine Fisheries Service, and California Department of Fish and Wildlife, shall undertake a monitoring program and other data gathering to insure take limits levels are not exceeded, and to identify potential negative impacts and actions necessary to mitigate any impacts of the temporary operational flexibility to species listed as threatened or endangered under the Endangered Species Act, 16 U.S.C. 1531-1544; and

(5) The Commissioner is authorized to take any action, including the transfer of appropriated funds between accounts that, in the Commissioner's judgment, are necessary to mitigate the impacts of such operations as long as any such mitigation is consistent with the requirements of this section.

(f) Technical adjustments to target period. If, before temporary operational flexibility has been implemented on 21 cumulative days, the Secretaries operate the Central Valley Project and the State Water Project combined at levels that result in Old and Middle River flows less negative than -7500 cubic feet per second during days of temporary operational flexibility as defined in subsection (c), the duration of such operation shall not be counted toward the 21 cumulative days specified in subsection (b).

(g) Emergency consultation; effect on running averages.

(1) If necessary to implement the provisions of this section, the Commissioner shall use the emergency consultation procedures under the Endangered Species Act and its implementing regulation at 50 CFR 402.05 to temporarily adjust the operating criteria under the biological opinions, solely for the 21 days of temporary operational flexibility—

(A) no more than necessary to achieve the purposes of this section consistent with the environmental protections in subsections (d) and (e); and

(B) including, as appropriate, adjustments to ensure that the actual flow rates during the periods of temporary operational flexibility do not count toward the 5-day and 14-day running averages of tidally filtered daily Old and Middle River flow requirements under the biological opinions.

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(2) Following the conclusion of the 21 days of temporary operational flexibility, the Commissioner shall not reinitiate consultation on these adjusted operations if the effects on listed fish species of these operations under this section remain within the range of those authorized under the Endangered Species Act.

(h) Level of detail required for analysis. In articulating the determinations required under this section, the Secretaries shall fully satisfy the requirements herein but shall not be expected to provide a greater level of supporting detail for the analysis than feasible to provide within the short time frame permitted for timely decision-making in response to changing conditions in the Delta.

(i) Duration. This section shall expire on September 30, 2015.

**SEC. 310. EXPEDITING WATER TRANSFERS.**

(a) In General.—Section 3405(a) of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4709(a)) is amended—

(1) by redesignating paragraphs (1) through (3) as paragraphs (4) through (6), respectively;

(2) in the matter preceding paragraph (4) (as so designated)—

(A) in the first sentence, by striking “In order to” and inserting the following:

“(1) IN GENERAL.—In order to”; and

(B) in the second sentence, by striking “Except as provided herein” and inserting the following:

“(3) TERMS.—Except as otherwise provided in this section”; and

(3) by inserting before paragraph (3) (as so designated) the following:

“(2) EXPEDITED TRANSFER OF WATER.—The Secretary shall take all necessary actions to facilitate and expedite transfers of Central Valley Project water in accordance with—

“(A) this Act;

“(B) any other applicable provision of the reclamation laws; and

“(C) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).”;

(4) in paragraph (4) (as so designated)—

(A) in subparagraph (A), by striking “to combination” and inserting “or combination”; and

(B) by striking “3405(a)(2) of this title” each place it appears and inserting “(5)”; and

(5) in paragraph (5) (as so designated), by adding at the end the following:

“(E) The contracting district from which the water is coming, the agency, or the Secretary shall determine if a written transfer proposal is complete within 45 days after the date of submission of the proposal. If the contracting district or agency or the Secretary determines that the proposal is incomplete, the district or agency or the Secretary shall state with specificity what must be added to or revised for the proposal

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to be complete.”; and

(6) in paragraph (6) (as so designated), by striking “3405(a)(1)(A)-(C), (E), (G), (H), (I), (L), and (M) of this title” and inserting “(A) through (C), (E), (G), (H), (I), (L), and (M) of paragraph (4)”.

(b) Conforming Amendments.—The Central Valley Project Improvement Act (Public Law 102–575) is amended—

(1) in section 3407(c)(1) (106 Stat. 4726), by striking “3405(a)(1)(C)” and inserting “3405(a)(4)(C)”;

(2) in section 3408(i)(1) (106 Stat. 4729), by striking “3405(a)(1) (A) and (J) of this title” and inserting “subparagraphs (A) and (J) of section 3405(a)(4)”

**SEC. 311. WARREN ACT CONTRACTS.**

[To be supplied.]

**SEC. 312. ADDITIONAL WARREN ACT CONTRACTS.**

[To be supplied.]

**TITLE IV—INCREASING WATER STORAGE**

**SEC. 401. FINDINGS.**

Congress finds that—

(1) the record drought conditions being experienced in the State as of the date of enactment of this Act are—

(A) expected to recur in the future; and

(B) likely to do so with increasing frequency;

(2) water storage is an indispensable and integral part of any solution to address the long-term water challenges of the State;

(3) Congress authorized relevant feasibility studies for 4 water storage projects in the State, including projects for—

(A) enlargement of Shasta Dam in Shasta County under section 2(a) of Public Law 96–375 (94 Stat. 1506), as reaffirmed under section 103(d)(1)(A)(i)(I) of Public Law 108–361 (118 Stat. 1684);

(B) enlargement of Los Vaqueros Reservoir in Contra Costa County under section 215 of Public Law 108–7 (117 Stat. 147), as reaffirmed under section 103(d)(1)(A)(i)(II) of Public Law 108–361 (118 Stat. 1684);

(C) construction of North-of-Delta Offstream Storage (Sites Reservoir) in Colusa County under section 215 of Public Law 108–7 (117 Stat. 147), as reaffirmed under section 103(d)(1)(A)(ii)(I) of Public Law 108–361 (118 Stat. 1684); and

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(D) construction of the Upper San Joaquin River storage (Temperance Flat) in Fresno and Madera Counties under section 215 of Public Law 108–7 (117 Stat. 147), as reaffirmed under section 103(d)(1)(A)(ii)(II) of Public Law 108–361 (118 Stat. 1684);

(4) (A) as of the date of enactment of this Act, it has been more than 10 years since the authorization of the feasibility studies referred to in paragraph (3); but

(B) complete and final feasibility studies have not been prepared for any of those water storage projects;

(5) as of August 2014, only 2 of the 4 projects referred to in paragraph (3) have completed draft feasibility studies;

(6) the slow pace of work on completion of the feasibility studies for those 4 water storage projects is—

(A) unjustified; and

(B) of deep concern; and

(7) there is significant public interest in, and urgency with respect to, completing all feasibility studies and environmental reviews for the water storage projects referred to in paragraph (3), given the critical need for that infrastructure to address the water challenges of the State.

## **SEC. 402. CALFED STORAGE FEASIBILITY STUDIES.**

(a) In General.—Notwithstanding subparagraph (B)(i) of section 103(d)(1) of Public Law 108–361 (118 Stat. 1684), the Secretary of the Interior, acting through the Commissioner of Reclamation (referred to in this title as the “Secretary”), shall complete a final feasibility study and any other applicable environmental review documents for the project described in—

(1) subparagraph (A)(i)(I) of that section by not later than December 31, 2014;

(2) subparagraph (A)(ii)(II) of that section by not later than July 31, 2015.

(b) Environmental Reviews.—In carrying out subsection (a), the Secretary—

(1) shall ensure that—

(A) all applicable reviews, including reviews required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), are completed as expeditiously as practicable; and

(B) the shortest applicable process under that Act is used, including in the completion of—

(i) feasibility studies;

(ii) draft environmental impact statements; and

(iii) final environmental impact statements; and

(2) shall not be required to complete a draft or final environmental impact statement if the Commissioner of Reclamation determines, and the Secretary concurs, that the project fails to meet applicable Federal cost-benefit requirements or standards.

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(c) Accountability.—

(1) If the Bureau of Reclamation determines that an environmental review document for the water storage projects referenced in of Section 103(d)(1) of P.L. 108-361 will not be completed according to the schedule specified in subsection (a), the Bureau shall notify the Senate Committee on Energy and Natural Resources, the Senate Appropriations Subcommittee on Energy and Water Development, and the House of Representatives Transportation and Infrastructure Committee within 14 days of the determination. The notification shall include:

(A) An explanation of the delay;

(B) The anticipated length of the delay and the revised completion date;

(C) The steps that the Bureau will take to mitigate the delay, including, but not limited to, a request to reprogram existing funds appropriated to the Bureau to meet the revised completion deadline.

(2) The Bureau of Reclamation shall carry out the procedures in subsection (a) for each subsequent delay beyond the revised completion deadline.

**SEC. 403. WATER STORAGE PROJECT CONSTRUCTION.**

(a) The Secretary, acting through the Commissioner of the Bureau of Reclamation, may partner or enter into an agreement on the water storage projects identified in section 103(d)(1) of the Water Supply Reliability and Environmental Improvement Act (Public Law 108-361) (and Acts supplemental and amendatory to the Act) with local joint powers authorities formed pursuant to State law by irrigation districts and other local water districts and local governments within the applicable hydrologic region, to advance those projects.

(b) [PLACEHOLDER FOR AUTHORIZATION ISSUE]

**SEC. 404. OTHER STORAGE FEASIBILITY STUDIES.**

(a) Definition of Qualifying Project.—In this section, the term “qualifying project” means new surface water storage projects constructed on lands administered by the Department of the Interior in a State in which the Bureau of Reclamation has jurisdiction, exclusive of any easement, right-of-way, lease, or any private holding.

(b) Lead Agency.—

(1) QUALIFYING PROJECTS WITHIN JURISDICTION OF BUREAU OF RECLAMATION.—The Bureau of Reclamation shall serve as the lead agency for purposes of coordinating all reviews, analyses, opinions, statements, permits, licenses, and other approvals or decisions required under Federal law (including regulations) to construct qualifying projects within the jurisdiction of the Bureau.

(2) QUALIFYING PROJECTS OUTSIDE JURISDICTION OF BUREAU OF RECLAMATION.—If the site of a qualifying project is not located in a State in which the Bureau of Reclamation has jurisdiction, the Secretary shall, by not later than 45 days after the date of receipt of an application for the qualifying project—

(A) designate an alternate agency within the Department of the Interior to serve as the lead agency for purposes of coordinating all reviews, analyses, opinions,

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statements, permits, licenses, and other approvals or decisions required under Federal law (including regulations) to construct the qualifying project; or

(B) in consultation with the heads of other Federal departments and agencies, identify the appropriate lead agency for the qualifying project.

(c) Cooperating Agencies.—

(1) FEDERAL DEPARTMENTS AND AGENCIES.—The lead agency designated under paragraph (1) or (2) of subsection (b) shall—

(A) as soon as practicable after receipt of an application for a qualifying project, identify any Federal department or agency that may have jurisdiction over a review, permit, license, approval, or decision required for the qualifying project under applicable Federal laws (including regulations); and

(B) as soon as practicable after the date of identification under subparagraph (A)—

(i) notify each applicable department or agency of the identification; and

(ii) designate the department or agency as a cooperating agency, unless the department or agency—

(I) has no jurisdiction or authority with respect to the qualifying project;

(II) has no expertise or information relevant to the qualifying project or any review, permit, license, approval, or decision associated with the qualifying project; or

(III) does not intend—

(aa) to submit comments regarding the qualifying project; or

(bb) to conduct any review of the qualifying project or make any decision with respect to the qualifying project in a manner other than in cooperation with the Bureau of Reclamation.

(2) STATES.—A State in which a qualifying project is proposed to be carried out may elect, consistent with Federal and State law, to participate as a cooperating agency, if the lead agency designated for the proposed qualifying project under paragraph (1) or (2) of subsection (b) determines that the applicable agency of the State—

(A) has jurisdiction over the qualifying project under applicable Federal or State law;

(B) is required to conduct or issue a review of the qualifying project; and

(C) is required to make a determination regarding issuing a permit, license, or approval of the qualifying project.

(d) Duties of Lead Agency.—

(1) IN GENERAL.—Not later than 30 days after the date of receipt of an application for approval of a qualifying project, the lead agency shall hold a meeting among the applicant, the lead agency, and all cooperating agencies to establish, with respect to the qualifying project, all applicable—

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- (A) requirements;
- (B) review processes; and
- (C) stakeholder responsibilities.

(2) SCHEDULE.—

(A) ESTABLISHMENT.—Not later than 30 days after the date of the meeting under paragraph (1), the lead agency, in consultation with the attendees of the meeting, shall establish a schedule for completion of the qualifying project, taking into consideration, among other relevant factors—

- (i) the responsibilities of cooperating agencies under applicable laws and regulations;
- (ii) the resources available to the cooperating agencies and non-Federal project stakeholders;
- (iii) the overall size and complexity of the qualifying project;
- (iv) the overall schedule for, and cost of, the qualifying project; and
- (v) the sensitivity of the natural and historic resources that may be affected by the qualifying project.

(B) REQUIREMENTS.—On establishment of a schedule for a qualifying project under subparagraph (A), the lead and cooperating agencies shall—

- (i) to the maximum extent practicable, adhere to the schedule; and
- (ii) submit to the Committee on Environment and Public Works of the Senate and the Committee on Natural Resources of the House of Representatives on a semiannual basis a report describing any delays in the schedule, including a description of—
  - (I) the reasons for the delay;
  - (II) the actions that the lead and cooperating agencies will take to minimize the delay; and
  - (III) a revised schedule for the qualifying project, if applicable.

(e) Environmental Reviews.—

(1) SINGLE, UNIFIED ENVIRONMENTAL REVIEW DOCUMENT.—

(A) IN GENERAL.—The lead agency with respect to a qualifying project, in consultation with appropriate stakeholders and cooperating agencies, shall determine whether a single, unified environmental review document relating to the qualifying project is sufficient to comply with applicable Federal laws (including regulations), including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(B) ACTION ON DECLINATION.—If, after consultation under subparagraph (A), a lead agency determines not to adopt a single, unified environmental review document relating to a qualifying project—

- (i) the lead agency shall—



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(I) document the reasons for the determination; and

(II) submit to the Secretary a report describing those reasons; and

(ii) the Secretary may require the adoption of a single, unified document at the discretion of the Secretary, based on good cause.

(2) ENVIRONMENTAL ASSESSMENT.—Except as provided under paragraph (4), if the lead agency with respect to a qualifying project, in consultation with cooperating agencies, determines that an environmental assessment is sufficient to comply with the requirements of this subsection and other applicable Federal laws (including regulations)—

(A) the public comment period for a draft environmental assessment shall be no more than 60 days after publication in the Federal Register of notice of the public issuance of that draft; and

(B) the lead agency shall issue the final environmental assessment by not later than 180 days after the end of the period for public comments on the draft environmental assessment.

(3) ENVIRONMENTAL IMPACT STATEMENT.— Except as provided under paragraph (4), if the lead agency with respect to a qualifying project, in consultation with cooperating agencies, determines that an environmental impact statement is required to comply with the requirements of this subsection and other applicable Federal laws (including regulations)—

(A) the public comment period for a draft environmental impact statement shall be no more than 60 days after publication in the Federal Register of notice of the public issuance of that draft; and

(B) the lead agency shall issue the final environmental impact statement by not later than 1 year after the end of the period for public comments on the draft environmental impact statement.

(4) MODIFICATION OF SCHEDULE.—In carrying out paragraphs (2) and (3),

(A) the lead agency with respect to a qualifying project may modify the schedule of the qualifying project if:

(i) the Federal lead agency can demonstrate good cause, such as the need for additional time to comply with other statutory or regulatory requirements other than the National Environmental Policy Act of 1969, and the head of that agency submits to Congress a written determination describing the cause and reasons for the modification no less than 30 days before the original scheduled deadline; or

(ii) the Federal lead agency, the project sponsor, the joint lead agency (as applicable), and all participating and cooperating agencies agree to such modification.

(B) no modification pursuant to subparagraph (4)(A) shall postpone the issuance of a final environmental assessment by more than 1 year, or a final environmental impact statement by more than 2 years, unless the conditions under (4)(A)(i) or (4)(A)(ii) are met.

(C) If a modification occurs pursuant to this paragraph, the Federal lead agency shall

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1 issue and adhere to the revised schedule unless the conditions under (4)(A)(i) or  
2 (4)(A)(ii) are met.

3 (5) REQUIREMENTS.—On commencement of the environmental review process under this  
4 subsection, the lead and cooperating agencies shall, as soon as practicable—

5 (A) make available to all stakeholders of the qualifying project information  
6 regarding—

7 (i) the environmental and socioeconomic resources located within the area of  
8 the qualifying project; and

9 (ii) the general locations of the alternatives under consideration; and

10 (B) identify any issues of concern regarding the potential environmental or  
11 socioeconomic effects of the qualifying project, including any issues that could  
12 substantially delay or prevent an agency from granting a permit or other approval that  
13 is needed for a study relating to the qualifying project.

14 (f) Concurrent Review Actions.—

15 (1) IN GENERAL.—Any review, analysis, permit, license, approval, or decision regarding a  
16 qualifying project made by a Federal, State, or local government agency shall be—

17 (A) conducted, to the maximum extent practicable, concurrently with any other  
18 applicable government agency; and

19 (B) incorporated in the schedule for the qualifying project under subsection (d)(2).

20 (2) REQUIREMENT.—The lead and cooperating agencies for a qualifying project shall  
21 formulate and implement administrative, policy, and procedural mechanisms to enable  
22 adherence to the schedule for the qualifying project in a timely, coordinated, and  
23 environmentally responsible manner.

24 (3) GUIDANCE.—The Secretary shall issue guidance regarding the use of programmatic  
25 approaches to carry out the environmental review process that, to the maximum extent  
26 practicable—

27 (A) eliminates repetitive discussions of the same issues;

28 (B) focuses on the actual issues ripe for analysis at each level of review;

29 (C) establishes a formal process for coordinating with participating and cooperating  
30 agencies, including the establishment of a list of all data required to carry out an  
31 environmental review process; and

32 (D) complies with the National Environmental Policy Act of 1969 (42 U.S.C. 4321  
33 et seq.) and all other applicable laws and regulations.

34 (g) Administrative Record and Data Management.—

35 (1) IN GENERAL.—The lead agency shall—

36 (A) be responsible for compiling the administrative record of the information used  
37 as the basis for decisions relating to a qualifying project; and

38 (B) to the maximum extent practicable and consistent with Federal law, make

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available all data regarding the qualifying project in a format that is accessible via electronic means for project stakeholders, cooperating agencies, and the public.

(2) REPORTS.—Not less frequently than once each year, the lead agency shall submit a progress report regarding a qualifying project to project stakeholders, cooperating agencies, the Committee on Environment and Public Works of the Senate, and the Committee on Natural Resources of the House of Representatives.

(h) Participation by Non-Federal Project Sponsors.—

(1) APPLICATION TO SERVE AS COOPERATING AGENCY.—A non-Federal sponsor of a qualifying project may submit to the lead Secretary an application to serve as a cooperating agency of the qualifying project for purposes of preparing any necessary documents relating to the qualifying project, including an environmental review, if—

(A) the non-Federal sponsor is a public agency as defined under the laws of the state in which the agency is located;

(B) the non-Federal sponsor agrees to adhere to—

(i) all required Federal laws (including regulations) in carrying out the qualifying project; and

(ii) all decisions regarding the qualifying project that have been agreed on by other stakeholders of the qualifying project; and

(C) the applicable lead agency certifies that participation by the non-Federal sponsor will not inappropriately bias the qualifying project in favor of the non-Federal sponsor.

(2) FUNDS.—Any funds contributed by a non-Federal sponsor to a qualifying project—

(A) may be accepted to maintain or accelerate progress on the qualifying project, subject to the condition that the Secretary shall—

(i) review the use of the funds; and

(ii) certify in writing that the funds—

(I) are used solely to complete applicable environmental reviews; and

(II) do not unduly influence any permit or approval decision regarding the qualifying project; and

(B) shall be applied toward the non-Federal cost-share of the qualifying project.

(i) Applicability to Calfed Storage Studies.—For any feasibility study referred to in section 401(3), this section shall apply to all activities to be carried out under the study on or after the date of enactment of this Act that would lead to congressional authorization of an applicable project for construction.

**SEC. 405. DAM SAFETY PROJECTS WITH INCREASED STORAGE COMPONENT.**

(a) Additional Project Benefits.—The Reclamation Safety of Dams Act of 1978 is amended—

(1) in section 3 (43 U.S.C. 507), by striking “Construction” and inserting “Except as

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provided in section 5B, construction”; and

(2) by inserting after section 5A (43 U.S.C. 509a) the following:

**“SEC. 5B. ADDITIONAL PROJECT BENEFITS.**

“(a) In General.—Notwithstanding section 3, if the Secretary, in the judgment of the Secretary, makes a determination described in subsection (b), the Secretary is authorized to develop any additional project benefit—

“(1) through the construction of new or supplementary works on a project in conjunction with the activities carried out by the Secretary pursuant to section 2; and

“(2) subject to the conditions described in the feasibility study relating to the project.

“(b) Description of Determination.—A determination referred to in subsection (a) is a determination by the Secretary that—

“(1) an additional project benefit, including but not limited to additional conservation storage capacity, is—

“(A) necessary; and

“(B) in the interests of the United States; and

“(2) the project benefit proposed to be carried out is—

“(A) feasible; and

“(B) not inconsistent with the purposes of this Act.

“(c) Requirements.—The costs associated with developing an additional project benefit under this section shall be—

“(1) allocated to entity or entities benefitting from the additional conservation storage capacity, subject to agreement between the state and federal funding agencies on such allocations; and

“(2) repaid in accordance with all applicable provisions of Federal reclamation law (the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act (43 U.S.C. 371 et seq.).”.

(b) San Luis Reservoir Expansion.—Section 103(f)(1)(A) of Public Law 108–361 (118 Stat. 1694) is amended—

(1) by striking “Funds” and inserting the following:

“(i) IN GENERAL.—Funds”; and

(2) by adding at the end the following:

“(ii) ENVIRONMENTAL REVIEWS AND FEASIBILITY STUDY.—The Commissioner of Reclamation shall submit to Congress—

“(I) an expansion draft environmental impact statement and feasibility study relating to the San Luis Reservoir by not later than April 1, 2016; and

“(II) a final environmental impact statement relating to the San Luis

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Reservoir by not later than December 31, 2016.”.

**SEC. 406. UPDATING WATER OPERATIONS MANUALS  
FOR NON-FEDERAL PROJECTS.**

(a) Definitions.—In this section:

(1) NON-FEDERAL PROJECT.—

(A) IN GENERAL.—The term “non-Federal project” means a non-Federal reservoir project operated for flood control in accordance with rules prescribed by the Secretary pursuant to section 7 of the Act of December 22, 1944 (commonly known as the “Flood Control Act of 1944”) (58 Stat. 890, chapter 665).

(B) EXCLUSION.—The term “non-Federal project” does not include any dam or reservoir owned by—

(i) the Bureau of Reclamation; or

(ii) the Corps of Engineers.

(2) OWNER.—The term “owner” with respect to a non-Federal project, does not include—

(A) the Secretary;

(B) the Secretary of the Interior; or

(C) the head of any other Federal department or agency, notwithstanding any Federal monetary contribution made toward the construction cost of the relevant non-Federal project, if the contribution is predicated on flood control or other specific benefit.

(3) SECRETARY.—The term “Secretary” means the Secretary of the Army.

(b) Review by Secretary.—

(1) IN GENERAL.—Not later than 1 year after the date of receipt of a request from the owner of a non-Federal project, the Secretary, in consultation with the owner, shall review the water control manual and flood control rule curves and any operational or structural modifications proposed by the owner, including the use of improved weather forecasting and run-off forecasting methods, to enhance the existing purposes of the non-Federal project.

(2) REPORT.—Not later than 90 days after the date of completion of a review under paragraph (1), the Secretary shall submit to the owner of the applicable non-Federal project a report describing the results of the review.

(3) PRIORITY.—In carrying out of this subsection, the Secretary shall give priority to review and revision of water control manuals and flood control rule curves for any non-Federal project—

(A) that is located in a State in which a drought emergency has been declared during the 1-year period ending on the date of review by the Secretary;

(B) the owner of which has submitted to the Secretary a formal request to review or revise the operations manual or rule curves to accommodate new watershed data or

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proposed project modifications or operational changes;

(C) the water control manual and hydrometeorological information establishing the flood control rule curves of which have not been revised during the 20-year period ending on the date of review by the Secretary;

(D) with respect to which a completed probable maximum flood analysis or other data indicates that revisions of the project control manual or rule curves are likely to enhance water supply benefits and flood control operations; and

(E) modifications or operational changes proposed by the owner of which are likely to enhance water supply benefits and flood control operations.

(4) NON-FEDERAL CONTRIBUTIONS.—The Secretary may accept non-Federal funds for all or a portion of the cost of carrying out a review or revision of water control manuals and rule curves for non-Federal projects under this subsection.

## SEC. 407. CENTRAL VALLEY PROJECT.

(a) Cooperative Agreements.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, to determine the feasibility of an agreement for long-term use of an existing or expanded non-Federal storage or conveyance facility to augment Federal water supply, ecosystem, and operational flexibility benefits, the Secretary shall offer to enter into cooperative agreements with non-Federal entities to provide replacement water supplies for drought relief for—

(A) contractors of the Central Valley Project (as defined in section 3403 of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706));

(B) units of the National Wildlife Refuge System;

(C) State wildlife areas; and

(D) private wetland areas.

(2) REQUIREMENTS.—A cooperative agreement under this subsection shall—

(A) include the purchase of storage capacity in non-Federal facilities from willing sellers; and

(B) provide reimbursement for the temporary use of available capacity in existing above-ground, off-stream storage and associated conveyance facilities owned by local water agencies.

(b) Report.—Not later than 2 years after the date of enactment of this Act, the Secretary shall submit to the Chief of the National Wildlife Refuge System and contractors of the Central Valley Project a report describing the feasibility of the agreement for long-term use described in subsection (a)(1).

## TITLE V—WATER RIGHTS PROTECTIONS

## SEC. 501. PROTECTIONS FOR STATE WATER PROJECT

**Commented [A5]:** The agencies have not had a chance to fully analyze this Title. We expect the House to provide further suggestions, and we will seek the agencies' technical feedback on the entire title with the House's suggestions included.

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**CONTRACTORS.**

If, as a result of the application of this Act, the California Department of Fish and Wildlife:

(a) revokes the consistency determination pursuant to California Fish and Game Code section 2080.1;

(b) amends or issues a new consistency determination pursuant to California Fish and Game Code section 2080.1 in a manner that results in reduced water supply to the State Water Project as compared with the water supply available under the Smelt Biological Opinion and the Salmonid Biological Opinion; or

(c) requires take authorization under section 2081 for operation of the State Water Project in a manner that results in reduced water supply to the State Water Project as compared with the water supply available under the Smelt Biological Opinion and the Salmonid Biological Opinion,

then, the water supply benefits of such action by the California Department of Fish and Wildlife accruing to the Central Valley Project, if any, shall be shared equally with the State Water Project.

**SEC. 502. AREA OF ORIGIN PROTECTIONS.**

(a) The Secretary of the Interior (Secretary) is directed in the operation of the Central Valley Project (CVP) to adhere to California's water rights laws governing water rights priorities by honoring water rights senior to those held by the United States for operation of the CVP, regardless of the source of priority, including any appropriative water rights initiated prior to December 19, 1914, as well as water rights and other priorities perfected or to be perfected pursuant to California Water Code Part 2 of Division 2. Article 1.7 (commencing with section 1215 of Chapter 1 of Part 2 of Division 2, Sections 10505, 10505.5, 11128, 11460, 11461, 11462 and 11463, and Sections 12200 to 12220, inclusive).

(b) Any action that requires that diversions be bypassed or that involves the release of water from any CVP water storage facility taken by the Secretary or the Secretary of the Department of Commerce pursuant to Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531, et seq.) shall be applied in a manner that is consistent with water rights priorities established by California law.

**SEC. 503. NO REDIRECTED ADVERSE IMPACTS.**

The Secretary shall ensure that, except as otherwise provided for in a water service or repayment contract, actions taken in compliance with legal obligations imposed pursuant to or as a result of this Act, including, but not limited to, such actions under the Endangered Species Act of 1973 (16 U.S.C. § 1531 et seq.) and other federal laws, shall not cause redirected adverse water supply or fiscal impacts to those within the Sacramento River Watershed or the State Water Project.

**SEC. 504. EFFECT ON STATE LAWS.**

Nothing in this Act preempts any State law in effect on the date of enactment of this Act, including area of origin and other water rights protections.



**TITLE VI—MISCELLANEOUS**

**SEC. 601. AUTHORIZED SERVICE AREA.**

(a) In General.—The authorized service area of the Central Valley Project authorized under the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706) shall include the area within the boundaries of the Kettleman City Community Services District, California, as in existence on the date of enactment of this Act.

(b) Long-term Contract.—

(1) IN GENERAL.—Notwithstanding the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706) and subject to paragraph (2), the Secretary of the Interior, in accordance with the reclamation laws, shall enter into a long-term contract with the Kettleman City Community Services District, California, under terms and conditions mutually agreeable to the parties, for the delivery of up to 900 acre-feet of Central Valley Project water for municipal and industrial use.

(2) LIMITATION.—Central Valley Project water deliveries authorized under the contract entered into under paragraph (1) shall be limited to the minimal quantity necessary to meet the immediate needs of the Kettleman City Community Services District, California, in the event that local supplies or State Water Project allocations are insufficient to meet those needs.

(c) Permit.—The Secretary shall apply for a permit with the State for a joint place of use for water deliveries authorized under the contract entered into under subsection (b) with respect to the expanded service area under subsection (a), consistent with State law.

(d) Additional Costs.—If any additional infrastructure, water treatment, or related costs are needed to implement this section, those costs shall be the responsibility of the non-Federal entity.

**SEC. 602. RESCHEDULED WATER.**

(a) In General.—In connection with operations of the Central Valley Project, California, if the San Luis Reservoir does not fill by the last day of February of any year, the Secretary of the Interior shall permit any entity with an agricultural water service or repayment contract for the delivery of water from the Delta Division or the San Luis Unit to reschedule into the immediately following contract year (March 1 through the last day of February) any unused Central Valley Project water previously allocated for irrigation purposes.

(b) Apportionment.—If water remaining in Federal storage in San Luis Reservoir on the last day of February of any year is insufficient to meet all rescheduling requests under subsection (a), the Secretary of the Interior shall, based on contract quantity, apportion among all contractors that request to reschedule water all water remaining in San Luis Reservoir on the last day of February of the applicable year.

(c) Availability of Additional Water.—The Secretary shall make all reasonable efforts to make available additional rescheduled water, if the efforts do not interfere with the Central Valley Project operations in the contract year for which Central Valley Project water has been

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rescheduled.

**SEC. 603. FISHERIES DISASTER DECLARATION.**

[TO BE SUPPLIED.]

**SEC. 604. OVERSIGHT BOARD FOR RESTORATION  
FUND.**

(a) Report; Advisory Board.—Section 3407 of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4726) is amended by adding at the end the following:

“(g) Report on Expenditure of Funds.—

“(1) IN GENERAL.—For each fiscal year, the Secretary, in consultation with the Advisory Board, shall submit to Congress a plan for the expenditure of all of the funds deposited into the Restoration Fund during the preceding fiscal year.

“(2) CONTENTS.—The plan shall include an analysis of the cost-effectiveness of each expenditure.

“(h) Advisory Board.—

“(1) ESTABLISHMENT.—There is established the Restoration Fund Advisory Board (referred to in this section as the ‘Advisory Board’), which shall be composed of 14 members appointed by the Secretary.

“(2) MEMBERSHIP.—

“(A) IN GENERAL.—The Secretary shall appoint members to the Advisory Board that represent the various Central Valley Project stakeholders, of whom—

“(i) 3 members shall be agricultural users of the Central Valley Project;

“(ii) 2 members shall be municipal and industrial users of the Central Valley Project;

“(iii) 3 members shall be power contractors of the Central Valley Project;

“(iv) 1 member shall be a representative of a federal wildlife refuge that contracts for Central Valley Project water supplies with the Bureau of Reclamation;

“(v) 1 member shall represent nongovernmental organizations involved in the protection and restoration of California fisheries;

“(vi) 1 member shall represent the commercial fishing industry;

“(vii) 1 member shall represent the recreational fishing industry; and

“(viii) 2 members shall be appointed at the discretion of the Secretary.

“(B) OBSERVER.—The Secretary and the Secretary of Commerce may each designate a representative to act as an observer of the Advisory Board.

“(C) CHAIRMAN.—The Secretary shall appoint 1 of the members described in subparagraph (A) to serve as Chairman of the Advisory Board.

**Commented [A6]:** The agencies are still reviewing the contents of this section. We anticipate the House will provide further suggestions, and we intend to seek the agencies' technical feedback on this language as modified by the House's suggestions.

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“(3) TERMS.—The term of each member of the Advisory Board shall be 4 years.

“(4) DATE OF APPOINTMENTS.—The appointment of a member of the Panel shall be made not later than—

(A) the date that is 120 days after the date of enactment of this Act; or

(B) in the case of a vacancy on the Panel described in subsection (c)(2), the date that is 120 days after the date on which the vacancy occurs.

“(5) Vacancies.—

(A) IN GENERAL.—A vacancy on the Panel shall be filled in the manner in which the original appointment was made and shall be subject to any conditions that applied with respect to the original appointment.

(B) FILLING UNEXPIRED TERM.—An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

(C) EXPIRATION OF TERMS.—The term of any member shall not expire before the date on which the successor of the member takes office.

“(6) Removal —A Member of the Panel may be removed from office by the Secretary of the Interior.

“(7) Federal Advisory Committee Act. —The Panel shall not be subject to the requirements of the Federal Advisory Committee Act.

“(8) DUTIES.—The duties of the Advisory Board are—

“(A) to meet not less frequently than semiannually to develop and make recommendations to the Secretary regarding priorities and spending levels on projects and programs carried out under this title;

“(B) to ensure that any advice given or recommendation made by the Advisory Board reflects the independent judgment of the Advisory Board;

“(C) not later than December 31, 2015, and annually thereafter, to submit to the Secretary and Congress the recommendations under subparagraph (A); and

“(D) not later than December 31, 2015, and biennially thereafter, to submit to Congress a report that details the progress made in achieving the actions required under section 3406.

“(9) ADMINISTRATION.—With the consent of the appropriate agency head, the Advisory Board may use the facilities and services of any Federal agency.”

“(10) Cooperation and Assistance.—

(A) Upon request of the Panel Chairperson for information or assistance to facilitate the carrying out of this section, the Secretary of the Interior shall promptly provide such information, unless otherwise prohibited by law.

(B) Space and Assistance.—The Secretary of the Interior shall provide the Panel with appropriate and adequate office space, together with such equipment, office supplies, and communications facilities and services as may be necessary for the

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operation of the Panel, and shall provide necessary maintenance services for such offices and the equipment and facilities located therein.

**SEC. 605. WATER OPERATIONS REVIEW PANEL.**

(a) Establishment.—There is established a panel to be known as the “Water Operations Review Panel”.

(b) Membership.—

(1) COMPOSITION.—The Panel shall be composed of 5 members appointed by the Secretary of the Interior, in consultation with the Secretary of Commerce, of whom—

(A) 1 member shall be a former State elected official, who shall be the Chairperson of the Panel;

(B) 2 members shall be fisheries biologists, of whom—

(i) 1 member shall have expertise in Delta smelt; and

(ii) 1 member shall have expertise in salmonids; and

(C) 2 members shall be engineers with substantial expertise in water operations.

(2) RECOMMENDATIONS. —The Secretary of the Interior shall consider the recommendations

(A) of the Governor of the State for the member appointed under subparagraph (1)(A);

(B) of the Director of the California Department of Water Resources for one of the members appointed under subparagraph (1)(C).

(3) PROHIBITION ON FEDERAL GOVERNMENT EMPLOYMENT.—For at least three years prior to appointment to the Panel, an individual appointed to the Panel under paragraph (1) shall not have been an employee of the Federal Government.

(4) DATE OF APPOINTMENTS.—The appointment of a member of the Panel shall be made not later than—

(A) the date that is 120 days after the date of enactment of this Act; or

(B) in the case of a vacancy on the Panel described in subsection (c)(2), the date that is 120 days after the date on which the vacancy occurs.

(c) Term; Vacancies.—

(1) TERMS.—A member of the Panel shall be appointed for a term of 3 years, except that, with respect to the members first appointed under this section—

(A) the Chairperson shall be appointed for a term of 3 years;

(B) of the members appointed under subsection (b)(1)(B)—

(i) 1 member shall be appointed for a term of 1 year; and

(iii) 1 member shall be appointed for a term of 2 years;

(C) of the members appointed under subsection (b)(1)(C)—

(i) 1 member shall be appointed for a term of 1 year; and

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(ii) 1 member shall be appointed for a term of 2 years.

(2) VACANCIES.—

(A) IN GENERAL.—A vacancy on the Panel shall be filled in the manner in which the original appointment was made and shall be subject to any conditions that applied with respect to the original appointment.

(B) FILLING UNEXPIRED TERM.—An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

(3) EXPIRATION OF TERMS.—The term of any member shall not expire before the date on which the successor of the member takes office.

(d) Removal. —A Member of the Panel may be removed from office by the Secretary of the Interior.

(e) Federal Advisory Committee Act. —The Panel shall not be subject to the requirements of the Federal Advisory Committee Act.

(f) Duties.

(1) Annual Assessment and Report on Agencies' Operational Decisions under this Act.—

(A) IN GENERAL.—No later than November 30, 2015, and annually no later than November 30 thereafter, the Panel shall report an assessment of the agencies' operational decisions under this Act and recommendations for the prospective implementation of this Act to the following Congressional committees:

(i) Senate Committee on Environment and Public Works;

(ii) Senate Appropriations Subcommittee on Energy and Water Development;

(iii) House Natural Resources Committee; and

(iv) House Appropriations Subcommittee on Energy and Water Development.

(B) RETROSPECTIVE ASSESSMENT.—In making the retrospective assessment under paragraph (1), the Panel shall review and evaluate the Director of the Fish and Wildlife Service, Administrator of NOAA Fisheries, and Commissioner of Reclamation's —

(i) decisions in implementing this Act and other Federal laws applicable to the operations of the Central Valley Project and the State Water Project;

(ii) compliance with the Endangered Species Act in relation to operations of the Central Valley Project and the State Water Project; and

(iii) efforts to minimize water supply disruptions while complying with the Endangered Species Act and this Act.

(C) PROSPECTIVE RECOMMENDATIONS.—The Panel shall make recommendations for prospective actions and potential actions warranting further study to better achieve the purposes of this Act and the Endangered Species Act as applied to the operations of the Central Valley Project and the State Water Project, including proposals—

(i) that in combination, both increase the survival of listed species and increase water supplies for the Central Valley Project and the State Water Project;

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(ii) to increase the survival of listed fish species with little to no adverse effects on water supplies for the Central Valley Project and the State Water Project that would result from taking the specific proposed action recommended;

(iii) to increase such water supplies with little to no adverse effects on the survival of listed fish species; and

(iv) that respond to the annual Delta Science Program Independent Review Panel reports on the Long-term Operations Opinions.

(2) Five-Year Assessment on Effectiveness of Provisions of Act and Recommended Legislative Changes.

(A) IN GENERAL.—No later than five years after the date of enactment of this Act, and every five years thereafter, the Panel shall issue a report that

(i) evaluates the effectiveness of the provisions of this Act; and

(ii) makes legislative recommendations on:

(I) provisions of this Act that should be amended or repealed because they are not effective or for other reasons; and

(II) alternative legislation or modifications to this Act that could provide additional water supplies for the Central Valley Project and the State Water Project without reducing the survival of listed fish species.

(B) GOAL FOR RECOMMENDATIONS.—To the extent possible, the Panel shall submit legislative recommendations which in the aggregate would improve water supplies for the Central Valley Project and the State Water Project and increase the survival of listed fish species.

(C) REPORT TO CONGRESS.—The Panel shall submit its legislative recommendations to the Congressional committees listed in paragraph (1)(A).

(3) Submission of Comments and Proposals to Panel.—

(A) IN GENERAL.—In preparing the reports under paragraphs (1) and (2), the Panel shall invite comments and proposals from any interested person.

(B) SCHEDULE.—The Panel shall publish a schedule for receipt of comments and proposals under subparagraph (A), together with instructions for how to submit the comments and proposals.

(g) Cooperation and Assistance.—

(1) Upon request of the Panel Chairperson for information or assistance to facilitate the carrying out of this section, the Secretary of Commerce and the Secretary of the Interior shall promptly provide such information, unless otherwise prohibited by law.

(2) Space and Assistance.—The Secretary of the Interior shall provide the Panel with appropriate and adequate office space, together with such equipment, office supplies, and communications facilities and services as may be necessary for the operation of the Panel, and shall provide necessary maintenance services for such offices and the equipment and facilities located therein.

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**SEC. 606. CONTINGENCY IN EVENT OF CONTINUING  
RESOLUTION FOR FISCAL YEAR 2015.**

The deadlines that apply to each respective Secretary, or agency, contained in sections 103(b), 103(d), 202, 204, and 205 shall be extended by the number of days that any resolution providing continuing appropriations for the Fish and Wildlife Service or NOAA Fisheries for fiscal year 2015 is in effect after January 1, 2015 if:

(1) such a resolution providing continuing appropriations for these agencies is enacted;

(2) the continuing resolution does not include funding for the agency actions prescribed in the sections of this Act specified above; and

(3) a funding shortfall remains for such agency actions after the Secretaries have consulted with the California Department of Water Resources, Central Valley Project and State Water Project contractors, and the Interagency Ecological Program.

**From:** Tom Birmingham  
**Sent:** Saturday, October 4, 2014 11:22 AM  
**To:** 'Watts, John (Feinstein)'  
**CC:** 'Bernhardt, David L.'  
**Subject:** RE: Language sent to Kiel attached

John,

I can be available to talk anytime over the weekend. What is convenient for you?

Tom

-----Original Message-----

From: Watts, John (Feinstein) [[mailto:John\\_Watts@feinstein.senate.gov](mailto:John_Watts@feinstein.senate.gov)]  
Sent: Saturday, October 04, 2014 8:36 AM  
To: 'tbirmingham@westlandswater.org'; 'DBernhardt@BHFS.com'  
Subject: Language sent to Kiel attached

Yay! We got the Administration clearance on its technical drafting assistance, and the language is sent. I also separately sent a redlined version of section 204 on the predator pilot program on the Stanislaus, so Denham's office as the lead author of that provision can see and respond to the agencies' (relatively few) suggested edits. I sent Kiel a clean version of the language, with just a few comment bubbles on factual issues the agencies are still checking, and on a few provisions where the agencies' expert technical drafting assistance is still in process.

Tom, can we talk some time over the weekend? I am going over the current language with House staff Monday at 3, and want to talk about ways to characterize it. Thanks.

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From: Watts, John (Feinstein)  
Sent: Saturday, October 04, 2014 10:33 AM Eastern Standard Time  
To: Watts, John (Feinstein)  
Subject:



**From:** Watts, John (Feinstein)  
**Sent:** Saturday, October 4, 2014 12:16 PM  
**To:** 'tbirmingham@westlandswater.org'  
**Subject:** Re: Language sent to Kiel attached

How about 330 eastern time, 1230 pacific time tomorrow?

----- Original Message -----

From: Tom Birmingham [<mailto:tbirmingham@westlandswater.org>]  
Sent: Saturday, October 04, 2014 02:21 PM Eastern Standard Time  
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**To:** 'Watts, John (Feinstein)'  
**Subject:** RE: Language sent to Kiel attached

Sounds good. May I invite David to join us?

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Sent: Saturday, October 04, 2014 10:33 AM Eastern Standard Time  
To: Watts, John (Feinstein)  
Subject:

**From:** Watts, John (Feinstein)  
**Sent:** Saturday, October 4, 2014 1:21 PM  
**To:** 'tbirmingham@westlandswater.org'  
**Subject:** Re: Language sent to Kiel attached

Yes, of course. I enjoy brainstorming with David, as you know.

----- Original Message -----

From: Tom Birmingham [<mailto:tbirmingham@westlandswater.org>]  
Sent: Saturday, October 04, 2014 03:36 PM Eastern Standard Time  
To: Watts, John (Feinstein)  
Subject: RE: Language sent to Kiel attached

Sounds good. May I invite David to join us?

-----Original Message-----

From: Watts, John (Feinstein) [[mailto:John\\_Watts@feinstein.senate.gov](mailto:John_Watts@feinstein.senate.gov)]  
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To: 'tbirmingham@westlandswater.org'  
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Sent: Saturday, October 04, 2014 10:33 AM Eastern Standard Time  
To: Watts, John (Feinstein)  
Subject:



**From:** Tom Birmingham  
**Sent:** Saturday, October 4, 2014 1:24 PM  
**To:** 'Bernhardt, David L.'  
**CC:** 'Watts, John (Feinstein)'  
**Subject:** FW: Language sent to Kiel attached

David,

John and I are scheduled to talk at 3:30 p.m. EDT (12:30 PDT) tomorrow, Sunday. Please join us if you are available. The call in number will be (800) [REDACTED] - [REDACTED] pass code [REDACTED]

Tom

-----Original Message-----

From: Watts, John (Feinstein) [[mailto:John\\_Watts@feinstein.senate.gov](mailto:John_Watts@feinstein.senate.gov)]  
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To: 'tbirmingham@westlandswater.org'  
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From: Watts, John (Feinstein)  
Sent: Saturday, October 04, 2014 10:33 AM Eastern Standard Time  
To: Watts, John (Feinstein)  
Subject:

**From:** Bernhardt, David L.  
**Sent:** Saturday, October 4, 2014 1:26 PM  
**To:** Tom Birmingham  
**CC:** Watts, John (Feinstein)  
**Subject:** Re: Language sent to Kiel attached

I will be on. Thank you.

David Bernhardt

> On Oct 4, 2014, at 4:24 PM, "Tom Birmingham" <[tbirmingham@westlandswater.org](mailto:tbirmingham@westlandswater.org)> wrote:  
>  
> David,  
>  
> John and I are scheduled to talk at 3:30 p.m. EDT (12:30 PDT) tomorrow, Sunday. Please join us if you are available. The call in number will be (800) [REDACTED] - [REDACTED] pass code [REDACTED]  
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>  
>  
>

STATEMENT OF CONFIDENTIALITY & DISCLAIMER: The information contained in this email message is attorney privileged and confidential, intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this email is strictly prohibited. If you have received this email in error, please notify us immediately by calling (303)-223-1300 and delete the message. Thank you.

**From:** Tom Birmingham  
**Sent:** Monday, October 6, 2014 3:20 PM  
**To:** 'Nelson, Damon'  
**CC:** 'Bernhardt, David L.'  
**Subject:** Meeting Tomorrow

Damon,

David Bernhardt and I were hopeful that we could come by your office at 9:30 a.m. tomorrow to discuss the latest draft. Will that work for you?

Tom



**From:** Watts, John (Feinstein)  
**Sent:** Monday, October 6, 2014 3:24 PM  
**To:** 'Tom Birmingham'; Bernhardt, David L.  
**Subject:** FW: Confidential draft water language  
**Attachments:** doc\_20141006143645.pdf

Confidential, fyi. See attachment. As far as I can tell, this is just from Melissa.

---

**From:** Poole, Melissa [mailto:MelissaP@paramountfarming.com]  
**Sent:** Monday, October 06, 2014 5:42 PM  
**To:** Watts, John (Feinstein)  
**Cc:** Poole, Melissa  
**Subject:** RE: Confidential draft water language

Thanks, John.

We really appreciate the Senator's and your continued work on this.

Attached are a few comments/questions.

Please call me to discuss at your convenience and let me know what we can do to help.

-Melissa

---

**From:** Watts, John (Feinstein) [mailto:John.Watts@feinstein.senate.gov]  
**Sent:** Monday, October 06, 2014 8:58 AM  
**To:** Poole, Melissa  
**Subject:** Confidential draft water language

Dear Melissa,

Attached is confidential draft water language that reflects expert technical drafting assistance that we received from the Administration. I am meeting with House Republican staff to go over this draft language at 3 pm eastern time today. I am also sharing a copy of this language with Jim Beck and Brent Walthall.

PLEASE DO NOT SHARE THIS LANGUAGE WITH ANYONE. It is absolutely critical that this preliminary draft does not leak. The only other water districts that are familiar with it are Westlands and Metropolitan.

The attached draft language shows a few comment bubbles on factual issues the agencies are still checking, and comments on a few provisions where the agencies' expert technical drafting assistance is still in process.

Senator Feinstein is highly determined to get legislation enacted this year to provide real help with the drought and water supply shortages. We hope we can work with you to get this done.

Best,

John  
202-████-████ direct

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1 Title: To provide drought relief in the State of California, and for other purposes.

2

3

4 Be it enacted by the Senate and House of Representatives of the United States of America in  
5 Congress assembled,

6 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

7 (a) Short Title.—This Act may be cited as the “California Drought Relief Act of 2014”.

8 (b) Table of Contents.—The table of contents of this Act is as follows:

9 Sec.1.Short title; table of contents.

10 Sec.2.Findings.

11 Sec.3.Definitions.

12 **TITLE I—ADJUSTING DELTA SMELT MANAGEMENT**  
13 **BASED ON INCREASED REAL-TIME MONITORING AND**  
14 **UPDATED SCIENCE**

15 Sec.101.Definitions.

16 Sec.102.Revise incidental take level calculation to reflect new science.

17 Sec.103.Factoring increased real-time monitoring and updated science into delta smelt  
18 management.

19 **TITLE II—ENSURING SALMONID MANAGEMENT IS**  
20 **RESPONSIVE TO NEW SCIENCE**

21 Sec.201.Definitions.

22 Sec.202.Required scientific studies.

23 Sec.203.Process for ensuring salmonid management is responsive to new science.

24 Sec.204.Pilot program to protect native anadromous fish in the Stanislaus River.

25 Sec.205.CALFED invasive species pilot projects in the Sacramento-San Joaquin Bay Delta and  
26 its tributaries.

27 Sec.206.Mark fishery and harvest management.

28 Sec.207.New actions to benefit Central Valley salmonids.

29 **TITLE III—OPERATIONAL FLEXIBILITY AND DROUGHT**  
30 **RELIEF**

31 Sec.301.Findings.

32 Sec.302.Definitions.

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- 1 Sec.303.Operational flexibility in times of drought.
- 2 Sec.304.Operation of cross-channel gates.
- 3 Sec.305.Flexibility for export/inflow ratio.
- 4 Sec.306.Emergency environmental reviews.
- 5 Sec.307.Prioritizing State revolving funds during droughts.
- 6 Sec.308.Increased flexibility for regular project operations.
- 7 Sec.309.Temporary operational flexibility for first few storms of 2015 water year.
- 8 Sec.310.Expediting water transfers.
- 9 Sec.311.Warren Act contracts. [PLACEHOLDER]
- 10 Sec.312.Additional Warren Act contracts. [PLACEHOLDER]

11 **TITLE IV—INCREASING WATER STORAGE**

- 12 Sec.401.Findings.
- 13 Sec.402.Calfed storage feasibility studies.
- 14 Sec.403.Water storage project construction.
- 15 Sec.404.Other storage feasibility studies.
- 16 Sec.405.Dam safety projects with increased storage component.
- 17 Sec.406.Updating water operations manuals for non-Federal projects.
- 18 Sec.407.Central Valley Project.

19 **TITLE V—WATER RIGHTS PROTECTIONS**

- 20 Sec.501.Protections for State water project contractors.
- 21 Sec.502.Area of origin protections.
- 22 Sec.503.No redirected adverse impacts.
- 23 Sec.504.Effect on State laws.

24 **TITLE VI—MISCELLANEOUS**

- 25 Sec.601.Authorized service area.
- 26 Sec.602.Rescheduled water.
- 27 Sec.603.Fisheries disaster declaration. [PLACEHOLDER]
- 28 Sec.604.Oversight board for Restoration Fund.
- 29 Sec.605.Water operations review panel.
- 30 Sec.606.Contingency in event of continuing resolution for fiscal year 2015.

31

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SEC. 2. FINDINGS.

Congress finds that—

(1) As established in the Proclamation of a State of Emergency issued by the Governor of the State on January 17, 2014, the State is experiencing record dry conditions;

(2) Extremely dry conditions have persisted in the State since 2012, and the drought conditions are likely to persist into the future;

(3) As of September 2014, the National Weather Service's forecast does not show a high likelihood of the State experiencing above-normal precipitation for the remainder of the calendar year;

(4) The water supplies of the State are at record-low levels, as indicated by the fact that all major Central Valley Project reservoir levels were at 20-35 percent of capacity as of September 25, 2014;

(5) The lack of precipitation has been a significant contributing factor to the 6,091 fires experienced in the State as of September 15, 2014, and which covered nearly 400,000 acres;

(6) According to a study released by the University of California, Davis in July 2014, the drought has led to the fallowing of 428,000 acres of farmland, loss of \$810 million in crop revenue, loss of \$203 million in dairy and other livestock value, and increased groundwater pumping costs by \$454 million. The statewide economic costs are estimated to be \$2.2 billion, with over 17,000 seasonal and part-time agricultural jobs lost;

(7) CVPIA Level II water deliveries to refuges have also been reduced by 25% in the north of Delta region, and by 35% in the south of Delta region;

(8) Only one-sixth of the usual acres of rice fields are being flooded this fall, which leads to a significant decline in habitat for migratory birds and an increased risk of disease at the remaining wetlands due to overcrowding of such birds;

(9) The drought of 2013 through 2014 constitutes a serious emergency that poses immediate and severe risks to human life and safety and to the environment throughout the State;

(10) The serious emergency described in paragraph (4) requires—

(A) immediate and credible action that respects the complexity of the water system of the State and the importance of the water system to the entire State; and

(B) policies that do not pit stakeholders against one another, which history shows only leads to costly litigation that benefits no one and prevents any real solutions;

(11) Federal law (including regulations) directly authorizes expedited decisionmaking procedures and environmental and public review procedures to enable timely and appropriate implementation of actions to respond to the type and severity of the serious emergency described in paragraph (4); and

(12) The serious emergency described in paragraph (4) fully satisfies the conditions necessary for the exercise of emergency decisionmaking, analytical, and public review requirements under—

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(A) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(B) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(C) water control management procedures of the Corps of Engineers described in section 222.5 of title 33, Code of Federal Regulations (including successor regulations); and

(D) the Reclamation States Emergency Drought Relief Act of 1991 (Public Law 102-250; 106 Stat. 53).

(13) The 2008 smelt biological opinion and 2009 salmonid biological opinion contain reasonable and prudent alternatives to protect listed fish species from being jeopardized by operation of the Central Valley Project and State Water Project and to prevent adverse modification of designated critical habitat;

(14) The effect of those reasonable and prudent alternatives in the biological opinions may restrict the amount of water pumping that can occur to deliver water for agricultural, municipal, industrial, groundwater, and refuge uses in California;

(15) Data on the difference between water demand and reliable water supplies for various regions south of the delta, including the San Joaquin Valley, indicate there is a significant annual gap between reliable water supplies to meet agricultural, municipal and industrial, groundwater, and refuges water needs within the South of Delta and Friant Division of the Central Valley Project and the State Water Project south of the Sacramento-San Joaquin River Delta and north of the Tehachapi mountain range and the demands of those areas. This gap varies depending on the methodology of the analysis performed, but can be represented in the following ways:

**Commented [A1]:** Agencies are verifying the accuracy of the facts within this finding.

(A) For Central Valley Project South-of-Delta water service contractors, if it is assumed that a water supply deficit is the difference in the amount of water available for allocation versus the maximum contract quantity, particularly in more recent years, then the water supply deficits that have developed from 1992 to 2014 as a result of changes besides natural variations in hydrology during this timeframe range between 720,000 and 1,100,000 acre-feet.

(B) For Central Valley Project and State Water Project water service contractors south of the Delta and north of the Tehachapi mountain range, if it is assumed that a water supply deficit is the difference between reliable water supplies, including maximum water contract deliveries, safe yield of groundwater, safe yield of local and surface supplies and long-term contracted water transfers, and water demands, including water demands from agriculture, municipal and industrial and refuge contractors, then the water supply deficit ranges between approximately 2,500,000 to 2,700,000 acre-feet.

(C) The California Water Plan evaluated outcomes under current conditions under 198 combinations of climate and growth scenarios, projecting a range of urban and agricultural reliability into the future. Reliability in this instance is defined as the percentage of years in which demand is sufficiently met by supply. Reliability across a range of futures within the San Joaquin Valley can be presented as:

(i) For the San Joaquin River Hydrologic Region, as defined in the California

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Water Plan:

(I) Urban supply reliability ranges between 90 and 100 percent, with a mean reliability across futures in the high 90<sup>th</sup> percentile; and

(II) Agricultural supply reliability ranges between 70 and 100 percent, with a mean reliability across futures in the mid-90<sup>th</sup> percentile.

(ii) For the Tulare Lake Hydrologic Region, as defined in the California Water Plan:

(I) Urban supply reliability ranges between 70 and 100 percent, with a mean reliability across futures in the mid-90<sup>th</sup> percentile; and

(II) Agricultural supply reliability ranges between 20 and 100 percent, with a mean reliability across futures in the low 70<sup>th</sup> percentile.

(16) Since the issuance of the biological opinions, recent studies have raised questions about the benefits to endangered salmonid populations from water pumping restrictions, including:

(A) Expert panel reviews have concluded that instantaneous water velocities in the tidal Delta affect juvenile salmonids, not “tidally average” flows, as previously assumed. Based on instantaneous water velocity modeling, water exports have a much smaller area of effect than was previously believed;

(B) Tagging studies conducted since 1993 (representing more than 28 million fish) demonstrate that the proportion of Sacramento Basin origin Chinook salmon entrained into the pumping facilities (including pre-screen losses) are on average less than 1/10 of 1%; and

(C) Telemetric studies of Sacramento Basin and San Joaquin Basin origin juvenile Chinook salmon have not demonstrated any significant adverse effect from water exports on fish survival.

(17) Data of pumping activities at the Central Valley Project and State Water Project delta pumps identifies that, on average from Water Year 2009 to Water Year 2014, pumping activity takes 893 delta smelt annually with an authorized take level of 5,003 delta smelt annually according to the biological opinion issued December 15, 2008.

(18) It is worth exploring whether there is a way to implement the biological opinions that would preserve the protections afforded listed fish and simultaneously increase water deliveries to the Central Valley Project and State Water Project without weakening environmental laws or protections.

(19) In 2014, better information exists than was known in 2008 concerning conditions and operations that may or may not lead to high salvage events that jeopardize the fish populations, and what alternative management actions can be taken to avoid jeopardy.

(20) Alternative management strategies, such as trapping and barging juvenile salmon through the Delta, removing non-native species, enhancing habitat, and monitoring fish movement and location in real-time can contribute significantly to protecting and recovering these endangered fish species, and at potentially lower costs to water supplies.

(21) Resolution of fundamental policy questions concerning the extent to which

Commented [A2]: Agencies are assessing this finding.

Smelt too

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application of the Endangered Species Act affects the operation of the Central Valley Project and State Water Project is the responsibility of Congress.

**SEC. 3. DEFINITIONS.**

In this Act:

(1) DELTA.—The term “Delta” means the Sacramento-San Joaquin Delta and the Suisun Marsh, as defined in sections 12220 and 29101 of the California Public Resources Code.

(2) Export Pumping Rates.—The term “export pumping rates” means the rates of pumping at the W.C. “Bill” Jones Pumping Plant and the Harvey O. Banks Pumping Plant, in the southern Delta.

(3) JEOPARDY.—The term “jeopardy” means to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.

(4) LISTED FISH SPECIES.—The term “listed fish species” means listed salmonid species and the Delta smelt.

(5) LISTED SALMONID SPECIES.—The term “listed salmonid species” means natural origin steelhead, natural origin genetic spring run Chinook, and genetic winter run Chinook salmon.

(6) OMR.—The term “OMR” means the Old and Middle River in the Delta.

(7) OMR FLOW OF -5000 CFS.—The term “OMR flow of -5000 cfs” means Old and Middle River flow of negative 5,000 cubic feet per second as measured by—

(A) the smelt biological opinion; and

(B) the salmonid biological opinion.

(8) SALMONID BIOLOGICAL OPINION.—The term “salmonid biological opinion” means the biological opinion issued by the National Marine Fisheries Service on June 4, 2009.

(9) SMELT BIOLOGICAL OPINION.—The term “smelt biological opinion” means the biological opinion on the Long-Term Operational Criteria and Plan for coordination of the Central Valley Project and State Water Project issued by the United States Fish and Wildlife Service on December 15, 2008.

(10) STATE.—The term “State” means the State of California.

**TITLE I—ADJUSTING DELTA SMELT MANAGEMENT  
BASED ON INCREASED REAL-TIME MONITORING AND  
UPDATED SCIENCE**

**SEC. 101. DEFINITIONS.**

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In this title:

(1) DIRECTOR.—The term “Director” means the Director of the United States Fish and Wildlife Service.

(2) DELTA SMELT.—The term “delta smelt” means the fish species with the scientific name *Hypomesus transpacificus*.

(3) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

## **SEC. 102. REVISE INCIDENTAL TAKE LEVEL CALCULATION FOR DELTA SMELT TO REFLECT NEW SCIENCE.**

No later than October 1, 2015, the Director of Fish and Wildlife Service, in cooperation with other federal, state, and local agencies, shall use the best scientific and commercial data available to complete a review and, if warranted, a modification of the incidental take level in the 2008 delta smelt biological opinion that takes into account, among other considerations,—

- (a) salvage information available over at least 18 years;
- (b) updated or more recently developed statistical models;
- (c) updated scientific and commercial data; and
- (d) the most recent information regarding the environmental factors driving delta smelt salvage.

## **SEC. 103. FACTORING INCREASED REAL-TIME MONITORING AND UPDATED SCIENCE INTO DELTA SMELT MANAGEMENT.**

(a) In General.—The reasonable and prudent alternative described in the 2008 delta smelt biological opinion, as amended, and any successor opinions, shall be implemented consistent with current best scientific and commercial data available, and implementation shall be adjusted accordingly as new scientific and commercial data are developed.

(b) Increased Monitoring to Inform Real-time Operations.—Contingent upon funding, the Secretary shall conduct additional surveys, on an annual basis at the appropriate time of the year based on environmental conditions, in collaboration with other delta science interests.

(1) In implementing this section, after seeking public input, the Secretary shall —

- (A) use the most appropriate survey methods for the detection of delta smelt to determine the extent that adult delta smelt are distributed in relation to certain levels of turbidity, or other environmental factors that may influence salvage rate; and

adult and juvenile?



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(B) use results from appropriate survey methods for the detection of delta smelt to determine how the Central Valley Project and State Water Project may be operated more efficiently to minimize salvage while maximizing rates of water export.

(2) During the period beginning on December 1, 2014 and ending March 31, 2015, and in each successive December through March period, if suspended sediment loads enter the Delta from the Sacramento River and the suspended sediment loads appear likely to raise turbidity levels in Old River north of the export pumps from values below 12 Nephelometric Turbidity Units (NTU) to values above 12 NTU, the Secretary shall—

(A) conduct daily monitoring using appropriate survey methods at locations including, but not limited to, the vicinity of Station 902 to determine the extent that adult Delta smelt are moving with turbidity toward the export pumps; and

(B) use results from the monitoring surveys at locations including, but not limited to, the vicinity of Station 902 to determine how increased trawling can inform daily real-time Central Valley Project and State Water Project operations to minimize salvage while maximizing rates of water export.

(c) Periodic Review of Monitoring.—At least once every 5 years, or sooner if the Secretary determines it is appropriate, the Secretary shall—

(1) evaluate whether the monitoring program under subsection (b), combined with other monitoring programs for the Delta, is providing sufficient data to inform Central Valley Project and State Water Project operations to minimize salvage while maximizing rates of water export; and

(2) determine whether the monitoring efforts should be changed in the short- or long-term to provide more useful data.

(d) Delta Smelt Distribution Study.—

(1) IN GENERAL.—No later than January 1, 2016, ~~contingent upon funding~~, the Secretary, in collaboration with Delta science partners, shall implement new targeted sampling and monitoring specifically designed to understand delta smelt abundance, distribution, and the types of habitat occupied by delta smelt during all life stages.

(2) SAMPLING.—The Delta smelt distribution study shall, at a minimum—

(A) include recording water quality and tidal data;

(B) be designed to understand delta smelt abundance, distribution, habitat use, and movements throughout the Bay Delta during all seasons;

(C) consider areas not routinely sampled by existing monitoring programs, including wetland channels, near-shore water, depths below 35 feet, and shallow-water; and

(D) use the most biologically appropriate survey methods, including sampling

*Just the legal  
Delta?  
Smelt found  
in other  
places too*

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gear suited to the type of sampling or monitoring.

(e) Scientifically supported implementation of Old and Middle River flow requirements.—In implementing the provisions of the smelt biological opinion, or any successor biological opinion, on reverse flow in the Old and Middle Rivers, the Secretary shall—

(1) consider the relevant provisions of the biological opinion or any successor biological opinion;

(2) manage reverse flow in Old and Middle Rivers as prescribed by the smelt biological opinion, or any successor biological opinion, to minimize water supply reductions for the Central Valley Project and the State Water Project;

(3) document in writing any significant facts about real-time conditions relevant to the determinations of reverse OMR flow rates, including—

(A) whether targeted real-time fish monitoring in Old River pursuant to this section, including monitoring in the vicinity of Station 902, indicates that a significant increase in the salvage of delta smelt is imminent; and

(B) whether near-term forecasts with available salvage models show under prevailing conditions that OMR flow of -5000 cubic feet per second will cause significantly increased take of delta smelt; and

(4) show in writing that any determination to manage OMR reverse flow at rates less negative than -5000 cubic feet per second is necessary to avoid a negative impact on the long-term survival of the Delta smelt, including an explanation of the data examined and the connection between those data and the choice made, after considering:

(A) the findings in paragraph (3);

(B) whether continued project operations over the remainder of the water year would exceed the incidental take level;

(C) the potential effects of entrainment on subsequent smelt abundance, including consideration of the distribution of the population throughout the Delta,

(D) the water temperature,

(E) other factors relevant to the determination; and

(F) whether any alternative measures could have a lesser water supply impact.

(5) for any subsequent biological opinion, make the showing required in paragraph

(4) for any determination to manage OMR reverse flow at rates less negative than the upper limit in the biological opinion.

(f) Memorandum of Understanding. No later than December 1, 2014, the Commissioner and the Director will execute a Memorandum of Understanding (MOU) to

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ensure that the smelt biological opinion is implemented in a manner that minimizes water supply losses while complying with applicable laws and regulations. If that MOU alters any procedures set out in the biological opinion, there will be no need to reinitiate consultation if those changes do not have an adverse effect on listed species and the implementation of the MOU would not be a major change to implementation of the biological opinion. Any change to procedures that does not create a new adverse effect to listed species will not alter application of the take exemption in the incidental take statement in the biological opinion under the Endangered Species Act, section 7(o)(2).

**TITLE II—ENSURING SALMONID MANAGEMENT IS RESPONSIVE TO NEW SCIENCE**

**SEC. 201. DEFINITIONS.**

In this title:

(1) ASSISTANT ADMINISTRATOR.—The term “Assistant Administrator” means the Assistant Administrator of NOAA Fisheries.

(2) SECRETARY.—The term “Secretary” means the Secretary of Commerce.

**SEC. 202. REQUIRED SCIENTIFIC STUDIES.**

(a) Trap and Barge Pilot Project to Increase Survivals Through the Delta.—The Assistant Administrator and the Commissioner shall, in collaboration with the U.S. Fish and Wildlife Service, the California Department of Fish and Wildlife and other interested parties, design, permit, implement and evaluate a pilot program to test the efficacy of an experimental trap and barge program to improve survival of juvenile salmonids emigrating from the San Joaquin watershed through the Delta, as further described below.

(1) Within 30 days of enactment, the Assistant Administrator shall convene a working group of the relevant agencies and other interested parties through which to develop and execute a plan for the design, budgeting, implementation and evaluation of such a pilot program, utilizing existing expertise on such trap and barge programs as may be available. Such plan shall detail a schedule and budget for the program, and identify the responsible parties for each element of the program.

(2) The Assistant Administrator shall provide an opportunity for public review and comment on the pilot program and also simultaneously seek an expeditious independent peer review of the program to improve its rigor and likelihood of success.

(3) Upon completion of (2), above, the Assistant Administrator shall complete the necessary design and evaluations of the pilot program and seek such authorizations and permits as may be required for its prompt implementation and evaluation by the Assistant Administrator, the Commissioner or such other parties as they determine most suitable.

(4) Subject to the availability of funding, the Assistant Administrator and the Commissioner shall seek to commence implementation of the pilot program in 2015 or as

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soon thereafter as is possible, and shall conduct such pilot for such period of time as needed to evaluate the efficacy of the program to improve survivals across a range of environmental conditions.

(5) The Assistant Administrator and the Commissioner shall jointly report annually to the Senate Environment and Public Works Committee and the House Committee on Natural Resources their progress in implementing this section, estimated survival rates through the Delta for both juvenile salmonids that were barged through the Delta and those that were not barged, and if survival rates are significantly higher for barged fish as compared to other outmigrating smolts, the Assistant Administrator's and Commissioner's recommendations regarding broadening the pilot program and any relevant recommendations pursuant to section 203.

(b) Tagging studies.

(1) IN GENERAL.—The Assistant Administrator, in collaboration with other delta science partners, shall implement tagging studies, including acoustic telemetry and PIT tagging studies as appropriate, wherein habitat, predators, flow conditions, or other factors are experimentally altered and the behavior and survival of tagged juvenile salmonids are observed. Studies may also be conducted to aid in the understanding of Chinook salmon and steelhead abundance, distribution, and survival.

(2) SAMPLING.—The sampling—

(A) shall include recording water quality and tidal data;

(B) will be designed to aid in the understanding of salmonid abundance, distribution, and movements throughout the Bay Delta, including estimates of through Delta survival from Knights Landing or from Mossdale to Chipps Island; and

(C) will supplement, not supplant, ongoing acoustic tag and coded wire survival studies in the San Joaquin and Sacramento Rivers which the Assistant Administrator determines are crucial for trend monitoring.

**SEC. 203. PROCESS FOR ENSURING SALMONID MANAGEMENT IS RESPONSIVE TO NEW SCIENCE.**

(a) General directive. The reasonable and prudent alternative described in the salmonid biological opinion allows for and anticipates adjustments in operating criteria to reflect the best scientific and commercial data currently available, and authorizes efforts to test and evaluate improvements in operations that will meet applicable regulatory requirements and enable improvements in water supply reliability. The Commissioner and the Assistant Administrator are hereby directed to utilize these authorities fully as described below.

(b) Annual reviews of certain operating criteria. No later than December 31, 2015, and at least annually thereafter,

(1) The Commissioner, in consultation with and with the assistance of the Assistant Administrator shall commence annual efforts to examine and identify adjustments to the initiation of Action IV.2.3 pertaining to negative OMR flows, subject to paragraph (5).

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(2) The Commissioner, in consultation with and with the assistance of the Assistant Administrator, shall examine and identify adjustments in the timing, triggers or other operational details relating to the implementation of pumping restrictions in Action IV.2.1 pertaining to the inflow to export requirements, subject to paragraph (5).

(3) Pursuant to the consultation and assessments carried out under paragraphs (1) and (2) of this subsection, the Commissioner shall make recommendations to the Assistant Administrator on adjustments that, in the exercise of the adaptive management provisions of the salmonid biological opinion, can improve water supplies and are consistent with the requirements of applicable law and as further described in subsection (c).

(4) The Commissioner shall implement those adjustments for which the conditions under subsection (c) are met.

(5) The Assistant Administrator and the Commissioner shall review and identify adjustments to water supply restrictions in any successor biological opinion to the salmonid biological opinion, applying the provisions of this section to those water supply restrictions where there are references to Actions IV.2.1 and IV.2.3.

(c) Adjustments that shall be implemented. In receiving the recommendations under subsection (b), the Assistant Administrator shall evaluate the effects of the recommended adjustments on listed species and shall recommend to the Commissioner adjustments for which:

(1) the net effect on listed species is equivalent to those of the underlying criteria, taking into account whatever actions or measures may be implemented in conjunction with the adjustments to mitigate its effects; and

(2) the effects of the adjustment fall within the incidental take authorizations.

(d) Taking into account offsetting species survival benefits from other measures.

(1) When examining opportunities to offset the potential adverse effect of adjustments to operating criteria, the Commissioner and the Assistant Administrator shall take into account the potential salmonid survival improvements that are likely to result from other measures which, if implemented in conjunction with the adjustments, would offset the adverse effects of the adjustments. When considering offsetting measures, the Commissioner and the Assistant Administrator shall consider the type, timing and nature of the adverse effects to specific species and ensure that the measures provide equivalent overall benefits to the listed species in the aggregate, as long as the change in survival rates for each species remains consistent with the Endangered Species Act and implementing regulations.

(2) The offsetting measures could include actions implemented with the support of a substantial contribution from water districts that would benefit from the adjustments.

(e) Framework for examining opportunities to minimize or offset the potential adverse effect of adjustments to operating criteria.—Not later than December 31, 2015, and every five years thereafter, the Assistant Administrator shall, in collaboration with the Director of the California Department of Fish and Wildlife, based on the best scientific and commercial data available and for each listed salmonid species, issue estimates of the increase in through-Delta survival the Secretary expects to be achieved—

(1) with export restrictions as specified by Action IV.2.3 as compared to limiting OMR flow to a fixed rate of -5000 cubic feet per second within the time period Action IV.2.3 is

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applicable, based on a given rate of San Joaquin River inflow to the Delta and holding other relevant factors constant;

(2) with San Joaquin River inflow to export restrictions specified within Action IV.2.1 as compared to the export restrictions in the April/May period imposed by the State Water Resources Control Board decision D-1641, based on a given rate of San Joaquin River inflow to the Delta and holding other relevant factors constant;

(3) by a trap and barge program based on the experience of other systems to the extent they are comparable, and the study described in section 202, as that information becomes available;

(4) through physical habitat restoration improvements;

(5) through predation control programs;

(6) through temporary barriers, the Cross Channel Gates, and other projects affecting flow in the Delta;

(7) by salvaging fish that may be entrained near the entrance to Clifton Court Forebay; and

(8) by any other management measures that may provide equivalent or better benefits for listed species with improvements to water supplies.

(f) Survival estimates to be quantitative to the maximum extent feasible.

(1) The Assistant Administrator shall make these estimates and determinations quantitatively to the maximum extent feasible, such as a range of percentage increases in through-Delta survival that could result from the management measures, and if the scientific information is lacking for quantitative estimates, shall do so on qualitative terms based upon the best available science.

(2) If the Assistant Administrator provides qualitative estimates of the benefits to the species from one or more management measures, the Secretary shall, to the maximum extent feasible, rank the management measures described in subsection (e) in terms of their most likely expected contribution to increased through-Delta survival relative to the other measures.

(3) If at the time the Assistant Administrator conducts the analysis under subsection (b), the Secretary has not issued the estimates of increased through-Delta survival benefits from different management measures pursuant to subsection (e), the Secretary shall compare the benefits to the species from different management measures based on the best scientific and commercial data available at the time.

(g) Comparison of adverse consequences for alternative management measures of equal benefit to the salmon.—

(1) For the purposes of this subsection—

(A) The alternative management measure or combination of alternative management measures identified in paragraph (2) shall be known as the “equivalent alternative measure.”

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(B) The existing measure or measures identified in subparagraphs (2)(A),(B),(C), or (D) shall be known as the “equivalent existing measure.”

(C) An “equivalent increase in through-Delta survival rates for listed salmonid species” shall mean an increase in through-Delta survival rates that is equivalent when considering the change in through-Delta survival rates for the listed salmonid species in the aggregate, and not necessarily the same change for each individual species, as long as the change in survival rates for each species remains consistent with the Endangered Species Act and implementing regulations.

(2) As part of the reviews of operating criteria pursuant to subsection (b), the Assistant Administrator shall determine whether any alternative management measures or combination of alternative management measures listed in subsection (e)(3) through (8) would provide an increase in through-Delta survival rates for listed salmonid species that is equivalent to the increase in through-Delta survival rates for listed salmonid species from the following:

(A) with export restrictions as specified by Action IV.2.3, as compared to limiting OMR flow to a fixed rate of -5000 cubic feet per second within the time period Action IV.2.3 is applicable;

(B) with export restrictions as specified by Action IV.2.3, as compared to a modification of Action IV.2.3 that would provide additional water supplies, other than that described in subparagraph (A);

(C) with San Joaquin River inflow to export restrictions specified within Action IV.2.1, as compared to the export restrictions in the April/May period imposed by the State Water Resources Control Board decision D-1641, or

(D) with San Joaquin River inflow to export restrictions specified within Action IV.2.1, as compared to a modification of Action IV.2.1 that would provide additional water supplies, other than that described in subparagraph (C).

(3) If the Assistant Administrator identifies an equivalent alternative measure pursuant to paragraph (2), the Assistant Administrator shall determine whether

(A) it is technically feasible and within federal jurisdiction to implement the equivalent alternative measure, and

(B) the adverse consequences of doing so are less than the adverse consequences of the equivalent existing measure, including a concise evaluation of the adverse consequences to other affected interests.

(4) If the Assistant Administrator makes the findings in subparagraph (3)(A) and (B), the Assistant Administrator and the Commissioner shall adjust the operating criteria in the salmonid biological opinion pursuant to this subsection to implement the equivalent alternative measure in place of the equivalent existing measure in order to increase water supplies to the greatest extent possible while maintaining a net combined effect of equivalent through-Delta survival rates for the listed salmonid species.

(h) Tracking adverse effects beyond the range of effects accounted for in the salmonid biological opinion and coordinated operation with smelt biological opinion.

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(1) Among the adjustments to the operational criteria considered through the adaptive management process under this section, the Assistant Administrator and the Commissioner shall

(A) Evaluate the effects on listed salmonid species and water supply of the potential adjustment to operational criteria described in subparagraph (B); and

(B) Consider requiring that before some or all of the provisions of Actions IV.2.1. or IV.2.3 are imposed in any specific instance, the Assistant Administrator show that the implementation of these provisions in that specific instance is necessary to avoid additional adverse effects upon listed salmonid species beyond the range of effects analyzed and accounted for in the salmonid biological opinion

(2) The Assistant Administrator, the Director and the Commissioner, in coordination with State officials as appropriate, shall establish operational criteria to coordinate management of OMR flows under the smelt and salmonid biological opinions, in order to take advantage of opportunities to provide additional water supplies from the coordinated implementation of the biological opinions.

(i) Real-Time Monitoring and Management. The Assistant Administrator and the Commissioner shall, through the NMFS adaptive management salmonid biological opinion provisions, analyze whether date-certain triggers that limit OMR reverse flow to -5000 cubic feet per second could be adjusted to instead use real-time migration information on salmonids. If the analysis shows that the use of real-time information to trigger OMR flow limitations would improve water supply without causing significant adverse effects to Winter-run Chinook salmon, then such real-time management triggers shall be implemented.

## **SEC. 204. PILOT PROGRAM TO PROTECT NATIVE ANADROMOUS FISH IN THE STANISLAUS RIVER.**

(a) Establishment of Non-native Predator Fish Removal Program. The Assistant Administrator, in consultation with the United States Fish and Wildlife Service and the California Department of Fish and Wildlife, shall develop and conduct a pilot non-native predator fish removal program to remove non-native striped bass, smallmouth bass, largemouth bass, black bass, and other non-native predator fishes in and around the Bay Delta, including the Stanislaus River, contingent upon funding. The pilot program shall--

(1) be scientifically based;

(2) include methods to quantify the number and size of predator fishes removed each year, the impact of such removal on the overall abundance of predator fishes, and the impact of such removal on the populations of juvenile anadromous fish found in the Stanislaus River and elsewhere by, among other things, evaluating the number of juvenile anadromous fish that migrate past the rotary screw trap located at Caswell;

(3) among other methods, use wire fyke trapping, portable resistance board weirs, and boat electrofishing, which are among the most effective predator collection techniques that minimize effects to native anadromous fish;

(4) be developed, including the application for all necessary scientific research and species enhancement permits under section 10(a)(1) of the Endangered Species Act of 1973



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(16 U.S.C. 1539(a)(1)), for the performance of the pilot program, not later than 6 months after the date of the enactment of this Act;

(5) be implemented on the first business day of the calendar year following the issuance of all necessary scientific research, species enhancement permits, and funding needed to begin the pilot program; and

(6) be implemented for a period of seven consecutive calendar years.

(b) Management. The Assistant Administrator is authorized and encouraged to enter into agreements with interested local water districts to jointly develop, implement and evaluate this pilot program. Such parties shall work collaboratively to ensure the performance of the pilot program, and shall discuss and agree upon, among other things, changes in the structure, management, personnel, techniques, strategy, data collection, reporting and conduct of the pilot program.

(c) Conduct.—

(1) IN GENERAL.—By agreement between the Assistant Administrator and the participating districts, the pilot program may be conducted by their own personnel, qualified private contractors hired by the districts, personnel of, on loan to, or otherwise assigned to NOAA Fisheries, or a combination thereof.

(2) PARTICIPATION BY NOAA FISHERIES.—In the event the districts elect to conduct the program using their own personnel or qualified private contractors hired by them, the Commissioner has the option to assign an employee of, on loan to, or otherwise assigned to NOAA Fisheries, to be present for all activities performed in the field. Such presence shall ensure compliance with the agreed upon elements specified in subsection (b). The districts shall pay 100 percent of the cost of such participation as specified in subsection (d).

(3) TIMING OF ELECTION.—The districts shall notify the Assistant Administrator of their election on or before October 15 of each calendar year of the pilot program, which election shall apply to the work performed in the subsequent calendar year.

(d) Funding.—

(1) ANNUAL FUNDING.—The Commissioner, the Assistant Administrator, and the participating districts shall develop a budget and funding plan for the pilot project that will allocate costs appropriately amongst the participating entities. On or before December 1 of each year of the pilot program, the Commissioner shall submit to the districts an estimate of the cost to be incurred by the Bureau of Reclamation in the following calendar year, if any, including the cost of any data collection and posting under subsection (e). If an amount equal to the estimate is not provided to the Assistant Administrator by the districts on or before December 31 of each year, (a) NOAA Fisheries shall have no obligation to conduct the pilot program activities otherwise scheduled, and (b) the districts shall be prohibited from conducting any aspect of the pilot program, until full payment is made by the districts.

(2) ACCOUNTING.—On or before September 1 of each calendar year, the Assistant Administrator shall provide an accounting of the prior calendar year's expenses to the participating entities. If the estimate paid by the districts was less than the actual costs incurred by NOAA Fisheries, the districts shall have until September 30 of that calendar year to pay the difference to the fund identified by the Assistant Administrator in subsection

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(d)(1), or NOAA Fisheries shall have no obligation to conduct the pilot program activities otherwise scheduled. If the estimate paid by the districts was greater than the actual costs incurred by NOAA Fisheries, then a credit shall be provided to the districts, which shall be deducted from the estimate payment the districts must make for the work performed by NOAA Fisheries, if any, in the next calendar year.

(e) Reporting and Evaluation.—

(1) IN GENERAL.—On or before the 15th day of each month, the Assistant Administrator shall post on the website of NOAA Fisheries a tabular summary of the raw data collected in the prior month.

(2) REPORT.—On or before June 30 of the calendar year following the completion of the program, the Assistant Administrator and districts shall jointly submit a report for peer review that—

(A) discusses the findings and conclusions of the pilot program;

(B) synthesizes the data collected under paragraph (1); and

(C) makes recommendations for further study and action.

(f) Permits Process.—

(1) Not later than one year after filing of an application by the Assistant Administrator and the districts, the Secretary of the Interior, the Secretary of Commerce, or both, as appropriate, shall issue all necessary scientific research and species enhancement permits under section 10(a)(1) of the Endangered Species Act (16 U.S.C. 153(9)(a)(1)), for the performance of the pilot program.

(2) All permits issued shall be in the name of NOAA Fisheries and the participating districts.

(3) Districts may delegate the authority to administer the permit authority to any qualified private contractor retained in accordance with subsection (c).

(g) Emergency Environmental Reviews.—To expedite this environmentally beneficial program for the conservation of threatened and endangered species, the Secretary of the Interior shall consult with the Council on Environmental Quality in accordance with Section 1506.11 of title 40, Code of Federal Regulations (including successor regulations) to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 for this section.

(h) Definitions.—For the purposes of this section:

(1) COMMISSIONER.—The term 'Commissioner' means the Commissioner of the Bureau of Reclamation.

(2) DISTRICTS.—The term 'districts' means the Oakdale Irrigation District and the South San Joaquin Irrigation District.

(3) PILOT PROGRAM.—The term 'program' means the pilot non-native predator removal program established under this section.

(i) Sunset.—The authorities provided under this section shall expire seven years after the implementation of the pilot program.

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1 SEC. 205. CALFED INVASIVE SPECIES PILOT PROJECTS  
2 IN THE SACRAMENTO-SAN JOAQUIN BAY DELTA AND  
3 ITS TRIBUTARIES.

4 (a) FINDINGS.—Congress finds that—

5 (1) The Sacramento-San Joaquin Bay Delta and its Tributaries—

6 (A) is one of the largest and most diverse estuaries in the United States,

7 (B) is a natural treasure and a vital link in California’s water system, and

8 (C) has native biodiversity important to the ecological and economic systems of  
9 California, including water deliveries to agriculture, municipalities and to the  
10 environment and fisheries industries, and

11 (D) has river tributaries important for rearing of salmon and steelhead smolts which  
12 experience a high level of predation from non-native species.

13 (2) Past, present and future introductions of invasive species are and will be a major  
14 factor in the decline of native pelagic and anadromous endangered or threatened species in  
15 the Sacramento–San Joaquin Bay Delta and its tributaries.

16 (3) More than 250 nonnative aquatic and plant species have been introduced into the  
17 Delta and its tributaries; of these, at least 185 species have become established and have  
18 altered the Sacramento-San Joaquin Bay Delta watershed’s ecosystem.

19 (4) The Bay Delta Conservation Plan, the Recovery Plan for the Evolutionarily  
20 Significant Units of Sacramento River Winter-run Chinook Salmon and Central Valley  
21 Spring-run Chinook Salmon and the Distinct Population Segment of the Central Valley  
22 Steelhead, the Recovery Plan for the Sacramento-San Joaquin Delta Native Fishes, and the  
23 multiple 5 year reviews of those plans all highlight that introduced nonnative invasive  
24 species are a significant factor in the decline of native fish species. These nonnative species,  
25 which include invasive aquatic vegetation, predators, and competitors, directly or indirectly  
26 cause biological stress for pelagic and anadromous endangered or threatened fish species in  
27 the Sacramento-San Joaquin Bay-Delta and its tributaries.

28 (5) If threats by nonnative species to native fish species are not addressed, there is a  
29 probability that native species of the Sacramento-San Joaquin Bay-Delta watershed’s  
30 pelagic and anadromous community will go extinct.

31 (6) The CALFED legislation (Public Law 108-361) authorized a program to prevent,  
32 control, and eradicate invasive species, but it has not been implemented to date.

33 (7) A focused pilot program needs to be conducted within the Delta and river tributaries  
34 to reduce threats to native listed species by nonnative species. Reducing nonnative stressors  
35 on native listed species will contribute to both native listed species recovery and lowering  
36 the impact on downstream water users as those native listed species recover.

37 (b) PILOT PROJECTS TO IMPLEMENT CALFED INVASIVE SPECIES PROGRAM.

38 (1) Not later than January 1, 2016, the Secretary of the Interior, in collaboration with the  
39 Secretary of Commerce and the Director of the California Department of Fish and Wildlife,

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shall begin pilot projects to implement the invasive species program, including prevention, control and eradication authorized pursuant to Section 103(d)(6)(A)(iv) of Public Law 108-361. The pilot projects shall:

(A) seek to reduce invasive aquatic vegetation, predators, and other competitors which are major factors in the decline of native listed pelagic and anadromous species that occupy the Sacramento and San Joaquin Rivers and their tributaries and the Sacramento-San Joaquin Bay-Delta; and

(B) address how to remove, reduce, or control the effects of species including: Asiatic clams, silversides, gobies, Brazilian water weed, largemouth bass, smallmouth bass, striped bass, crappie, bluegill, white and channel catfish, and brown bullheads.

(2) The Secretary of the Interior's efforts shall consist of the following phases:

(A) Phase 1. The Secretary of the Interior shall convene a panel of experts, including experts recommended by the State of California, to:

- (i) Identify the non-native species having the greatest impact on the viability of native pelagic and anadromous native listed species; and
- (ii) Identify the non-native species for which actions to reduce or control the population is determined to be possible; and
- (iii) Design a study to reduce the non-native species identified in clauses (i) and (ii) and prepare a cost estimate to implement this study.

(B) Phase 2. The Secretary of the Interior shall test the general viability of nonnative reduction methods, including either direct predator removal or alteration of channel conditions, or some combination thereof, through pilot projects at multiple sites in addition to the projects on the Stanislaus River pursuant to Section 204, including known hotspots of predator aggregation or activity, such as:

- (i) Clifton Court Forebay,
- (ii) Central Valley Project intakes,
- (iii) Head of Old River,
- (iv) Georgiana Slough,
- (v) Old and Middle Rivers,
- (vi) Franks Tract,
- (vii) Paintersville Bridge,
- (viii) individual river tributaries important for wild populations of anadromous species listed as threatened or endangered under the Endangered Species Act of 1973,
- (ix) Human-made submerged structures, and
- (x) Salvage release sites.

(C) Phase 3. If it is feasible to do so, the Secretary of the Interior shall implement nonnative reduction methods at a larger number of sites, incorporating information learned during the first and second phase.

Commented [A]: Awaitin feedback from the agencies on whether the experts in an existin predation workshop would address the items outlined in clauses (i) throu h (iii) of subpara raph (A) in the proposed text.

predation workshop  
held by  
DFW in  
June 2013, ensure  
findings considered  
and were not  
duplicated

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(3) The Secretary of the Interior shall collect data associated with the implementation of the projects above, and shall specifically collect data on the impact on

(A) pelagic and anadromous species listed as threatened or endangered under the Endangered Species Act of 1973,

(B) water quality, and

(C) water supply.

(4) After assessing the data described in subparagraph (2), the Secretary of the Interior, in collaboration with the Secretary of Commerce and the Director of the California Department of Fish and Wildlife, shall, if appropriate, annually recommend revisions to the reasonable and prudent alternatives contained in the salmonid biological opinion and the smelt biological opinion, or other administrative federal requirements governing the operation of the Central Valley Project and the State Water Project, that are likely to produce additional fishery, water quality, and water supply benefits.

(c) IMPLEMENTATION. The Secretary of the Interior shall implement the CALFED program described in subpart (b) for at least a period of seven consecutive years beginning on the date of implementation.

(d) REPORTING REQUIREMENTS. The Secretary of the Interior shall provide reports to the Senate Committee on Environment and Public Works and the House Committee on Natural Resources on the following:

(1) No later than January 1, 2016, a description of the projects described in subpart (b), including the application for all necessary scientific research and species enhancement permits under section 10(a)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)), and for the performance of the CALFED invasive species Program.

(2) Upon the completion of Phase I as described in subsection (b)(1)(A), a report describing its implementation and cost effectiveness.

(3) Two years after the project begins, a report describing the progress of the eradication of the nonnative species in the Sacramento-San Joaquin Bay-Delta and its tributaries and how such efforts have helped the Recovery Plans for endangered and threatened Anadromous and Pelagic Species in the Sacramento-San Joaquin Bay-Delta watershed and the associated cost effectiveness of each control measure.

(4) After the pilot projects are complete, a report describing the results of the program, including recommendations on whether the program should be continued, how the program may be taken to full scale in the most cost effective manner, and how a mitigation program for the Central Valley Project allowable under section 10(a)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)) could be implemented.

(e) EMERGENCY ENVIRONMENTAL REVIEWS. To expedite this environmentally beneficial program for the conservation of threatened and endangered species, the Secretary of the Interior shall consult with the Council on Environmental Quality in accordance with section 1506.11 of title 40, Code of Federal Regulations (including successor regulations) to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 for this program.

SEC. 206. MARK FISHERY AND HARVEST  
MANAGEMENT.

To minimize the impact of harvest and project operations on salmonids, contribute to recovery of stocks of endangered or threatened species, improve management of fish stocks of both hatchery and natural origins, and to minimize risk of a natural origin fall Chinook listing under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), the Assistant Administrator shall

(1) in partnership with the Director of the California Department of Fish and Wildlife and persons responsible for funding Central Valley hatcheries, convene an independent science panel within 60 days of enactment of this Act to follow up on the 2012 California Hatchery Scientific Review Group's recommendations by providing an assessment of costs and benefits associated with marking, with tagging, and with a program that combines in some way marking and tagging Central Valley hatchery produced fall Chinook. The Assistant Administrator shall ensure that the independent science panel—

(A) Includes an appropriate number of scientific experts as determined and appointed by the Assistant Administrator, and an equal number of scientific experts selected by entities responsible for funding California salmon mitigation hatcheries;

(B) Considers and gives equal weight to both inland and ocean monitoring and management needs, including harvest.

(C) Completes the review by December 31, 2015.

(2) assess and implement harvest management strategies by October 1, 2018 to provide better protection for sensitive Chinook stocks while still allowing for harvest of hatchery fall Chinook.

SEC. 207. NEW ACTIONS TO BENEFIT CENTRAL  
VALLEY SALMONIDS.

Not later than March 1, 2016, under similar terms and conditions as successful United States Fish and Wildlife Service programs on Clear Creek and Battle Creek, the Director, in collaboration with the Director of the California Department of Fish and Wildlife, the Commissioner of the Bureau of Reclamation, or both, shall issue necessary permits and otherwise facilitate the deployment of temporary in-river structures—

(1) to protect and grow natural origin spring Chinook populations by blocking access to hatchery origin fall Chinook; and

(2) to prevent hatchery origin Chinook salmon and steelhead from reaching spawning grounds where the species will compete for spawning with natural origin fish listed under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

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TITLE III—OPERATIONAL FLEXIBILITY AND DROUGHT  
RELIEF

SEC. 301. FINDINGS.

Congress finds that—

(1) Based on the congressional findings in Sec. 2 of this Act, it is appropriate and necessary for federal agencies to exercise the maximum amount of flexibility provided to them under the applicable laws and regulations to maximize delivery of water supplies while providing the same or better levels of protection for species.

SEC. 302. DEFINITIONS.

In this title:

(1) CENTRAL VALLEY PROJECT.—The term “Central Valley Project” has the meaning given the term in section 3403 of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4707).

(2) KLAMATH PROJECT.—The term “Klamath Project” means the Bureau of Reclamation project in the States of California and Oregon, as authorized under the Act of June 17, 1902 (32 Stat. 388, chapter 1093).

(3) RECLAMATION PROJECT.—The term “Reclamation Project” means a project constructed pursuant to the authorities of the reclamation laws and whose facilities are wholly or partially located in the State.

(4) SECRETARIES.—The term “Secretaries” means—

(A) the Administrator of the Environmental Protection Agency;

(B) the Secretary of Agriculture;

(C) the Secretary of Commerce; and

(D) the Secretary of the Interior.

(5) STATE WATER PROJECT.—The term “State Water Project” means the water project described by California Water Code section 11550 et seq., and operated by the California Department of Water Resources.

SEC. 303. OPERATIONAL FLEXIBILITY IN TIMES OF  
DROUGHT.

(a) Water Supplies.—

(1) IN GENERAL.—In response to a declaration of a state of drought emergency by the Governor of California and for the period of time such a drought declaration remains in effect, the Secretaries shall provide the maximum quantity of water supplies practicable to Central Valley Project agricultural, municipal and industrial, and refuge service and repayment contractors, State Water Project contractors, and any other tribe, locality or municipality in the State, by approving, consistent with applicable laws (including

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regulations), projects and operations to provide additional water supplies as quickly as practicable based on available information to address the emergency conditions.

(2) APPLICATION.—Paragraph (1) applies to projects or operations involving the Klamath Project if the projects or operations would benefit Federal water contractors in the State.

(b) Administration.—In carrying out subsection (a), the Secretaries shall, consistent with applicable laws (including regulations)—

(1) issue all necessary permit decisions under the authority of the Secretaries not later than 30 days after the date on which the Secretaries receive a completed application from the State to place and use temporary barriers or operable gates in Delta channels to improve water quantity and quality for the State Water Project and the Central Valley Project south of Delta water contractors and other water users, on the condition that the barriers or operable gates—

(A) provide benefits for species protection and in-Delta water user water quality; and

(B) are designed so that formal consultations under section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) are not necessary;

(2) require the Director of the United States Fish and Wildlife Service and the Commissioner of Reclamation—

(A) to complete, not later than 30 days after the date on which the Director or the Commissioner receives a complete written request for water transfer associated with voluntarily fallowing nonpermanent crops in the State, all requirements under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) necessary to make final permit decisions on the request; and

(B) to grant any water transfer request described in subparagraph (A) to maximize the quantity of water supplies available for nonhabitat uses, on the condition that the fallowing and associated water transfer are in compliance with applicable Federal laws (including regulations);

(3) adopt a 1:1 inflow to export ratio for the increment of increased flow of the San Joaquin River, as measured as a 3-day running average at Vernalis during the period beginning on April 1, and ending on May 31, resulting from voluntary transfers and exchanges of water supplies, on the condition that a proposed transfer or exchange under this paragraph may only proceed if the Secretary of the Interior determines that the environmental effects of the proposed transfer or exchange are consistent with effects permissible under applicable law (including regulations), and Delta conditions are suitable to allow movement of the transfer water through the Delta consistent with Reclamation's permitted rights; and

(4) Provide additional priority for eligible WaterSMART projects that address drought conditions including projects that—

(A) provide emergency drinking and municipal water supplies to localities in a quantity necessary to meet minimum public health and safety needs;



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(B) prevent the loss of permanent crops;

(C) minimize economic losses resulting from drought conditions; or

(D) provide innovative water conservation tools and technology for agriculture and urban water use that can have immediate water supply benefits.

(c) Accelerated Project Decision and Elevation.—

(1) IN GENERAL.—On request by the Governor of the State, the heads of Federal agencies shall use the expedited procedures under this subsection to make final decisions relating to a Federal project or operation if the project's or operation's purpose is to provide relief for emergency drought conditions pursuant to subsections (a) and (b).

(2) REQUEST FOR RESOLUTION.—

(A) IN GENERAL.—On request by the Governor of the State, the head of a Federal agency referenced in paragraph (1), or the head of another Federal agency responsible for carrying out a review of a project, as applicable, the Secretary of the Interior shall convene a final project decision meeting with the heads of all relevant Federal agencies to decide whether to approve a project to provide relief for emergency drought conditions.

(B) MEETING.—The Secretary of the Interior shall convene a meeting requested under subparagraph (A) not later than 7 days after the date on which the meeting request is received.

(3) NOTIFICATION.—On receipt of a request for a meeting under paragraph (2), the Secretary of the Interior shall notify the heads of all relevant Federal agencies of the request, including information on the project to be reviewed and the date of the meeting.

(4) DECISION.—Not later than 10 days after the date on which a meeting is requested under paragraph (2), the head of the relevant Federal agency shall issue a final decision on the project, subject to subsection (e)(2).

(5) MEETING CONVENED BY SECRETARY.—The Secretary of the Interior may convene a final project decision meeting under this subsection at any time, at the discretion of the Secretary, regardless of whether a meeting is requested under paragraph (2).

(d) Application.—To the extent that a Federal agency, other than the agencies headed by the Secretaries, has a role in approving projects described in subsections (a) and (b), this section shall apply to those Federal agencies.

(e) Limitation.—Nothing in this section authorizes the heads of applicable Federal agencies to approve projects—

(1) that would otherwise require congressional authorization; or

(2) without following procedures required by applicable law.

(f) 2015 Drought Plan. The Secretaries of Commerce and the Interior, in consultation with appropriate State officials, shall develop a drought operations plan for 2015 that is consistent with the provisions of this section and other provisions of this Act intended to provide additional water supplies that could be of assistance during the current drought.

SEC. 304. OPERATION OF CROSS-CHANNEL GATES.

(a) In General.—The Secretary of Commerce and the Secretary of the Interior shall jointly—

(1) authorize and implement activities to ensure that the Delta Cross Channel Gates remain open to the maximum extent practicable using findings from the United States Geological Survey on diurnal behavior of juvenal salmonids, timed to maximize the peak flood tide period and provide water supply and water quality benefits for the duration of the drought emergency declaration of the State, consistent with operational criteria and monitoring criteria developed pursuant to the Order Approving a Temporary Urgency Change in License and Permit Terms in Response to Drought Conditions of the California State Water Resources Control Board, effective January 31, 2014 (or a successor order) and other authorizations associated with it;

(2) with respect to the operation of the Delta Cross Channel Gates described in paragraph (1), collect data on the impact of that operation on—

(A) species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(B) water quality; and

(C) water supply;

(3) consistent with knowledge gained from activities carried out during 2014, collaborate with the California Department of Water Resources to install a deflection barrier at Georgiana Slough in coordination with Delta Cross Channel Gate diurnal operations to protect migrating salmonids;

(4) evaluate the combined salmonid survival in light of activities carried out pursuant to paragraphs (1) through (3) in deciding how to operate the Delta Cross Channel gates to enhance salmonid survival and water supply benefits; and

(5) not later than May 15, 2015, submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives a written report on the extent to which the gates are able to remain open.

(b) Recommendations.—After assessing the information collected under subsection (a), the Secretary of the Interior shall recommend revisions to the operation of the Delta Cross-Channel Gates, to the Central Valley Project, and to the State Water Project, including, if appropriate, any reasonable and prudent alternative contained in the biological opinion issued by the National Marine Fisheries Service on June 4, 2009, that are likely to produce fishery, water quality, and water supply benefits. The Secretary shall also coordinate with the State Water Resources Control Board to seek consistent direction for the operation of the Delta Cross-Channel Gates under federal and state law, including Water Right Decision 1641.

SEC. 305. FLEXIBILITY FOR EXPORT/INFLOW RATIO.

In response to the declaration of a state of drought emergency by the Governor of California and for the period of time such a drought declaration remains in effect, the Commissioner of the Bureau of Reclamation shall continue to vary the averaging period of the Delta Export/Inflow ratio pursuant to the California State Water Resources Control Board decision D1641, approved

Commented [A4]: Agencies are investigating the feasibility of diurnal operations.

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in the March Temporary Urgency Change Order—

(1) to operate to a 35 percent Export/Inflow ratio with a 3 day averaging period on the rising limb of a Delta inflow hydrograph; and

(2) to operate to a 14 day averaging period on the falling limb of the Delta inflow hydrograph.

**SEC. 306. EMERGENCY ENVIRONMENTAL REVIEWS.**

To minimize the time spent carrying out environmental reviews and to deliver water quickly that is needed to address emergency drought conditions in the State during the duration of an emergency drought declaration, the head of each applicable Federal agency shall, in carrying out this Act, consult with the Council on Environmental Quality in accordance with section 1506.11 of title 40, Code of Federal Regulations (including successor regulations), to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) during the emergency.

**SEC. 307. PRIORITIZING STATE REVOLVING FUNDS DURING DROUGHTS.**

(a) In General.—This section shall apply for each of the fiscal years during which an emergency drought declaration of the State is in effect.

(b) The Administrator of the Environmental Protection Agency, in implementing the processes and programs under the State water pollution control revolving funds established under title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) and the State drinking water treatment revolving loan funds established under section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12), shall, for those projects that are eligible to receive assistance under section 603 of the Federal Water Pollution Control Act (33 U.S.C. 1383) or section 1452(a)(2) of the Safe Drinking Water Act (42 U.S.C. 300j–12(a)(2)),

(1) issue a determination of waivers within 30 days of the conclusion of the informal public comment period pursuant to section 436(c) of title IV of division G of Public Law 113–76; and

(2) authorize, at the request of the State, 40-year financing for assistance under section 603(d)(2) of the Federal Water Pollution Control Act (33 U.S.C. 1383(d)(2)) or section 1452(f)(2) of the Safe Drinking Water Act (42 U.S.C. 300j–12(f)(2)).

(c) Effect of Section.—Nothing in this section authorizes the Administrator of the Environmental Protection Agency to modify any funding allocation, funding criteria, or other requirement relating to State water pollution control revolving funds established under title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) and the State drinking water treatment revolving loan funds established under section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12) for any other State.

**SEC. 308. INCREASED FLEXIBILITY FOR REGULAR PROJECT OPERATIONS.**

The Secretaries shall, consistent with applicable laws (including regulations)—

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(1) to the maximum extent practicable, based on the availability of water and without causing land subsidence or violating water quality standards—

(A) help meet the contract water supply needs of Central Valley Project refuges through the improvement or installation of water conservation measures, water conveyance facilities, and wells to use groundwater resources, on the condition that those activities may only be accomplished by using funding made available under the Water Assistance Program or the WaterSMART program of the Department of the Interior; and

(B) make available to Central Valley Project contractors a quantity of Central Valley Project surface water obtained from the activities carried out under subparagraph (A);

(2) contingent upon funding, in coordination with the Secretary of Agriculture, enter into an agreement with the National Academy of Sciences to conduct a comprehensive study, to be completed not later than 1 year after the date of enactment of this Act, on the effectiveness and environmental impacts of saltcedar biological control efforts on increasing water supplies and improving riparian habitats of the Colorado River and its principal tributaries, in the State and elsewhere;

(3) in coordination with the California Department of Water Resources and the California Department of Fish and Wildlife, implement offsite upstream projects in the Delta and upstream Sacramento River and San Joaquin basins that offset the effects on species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) due to activities carried out pursuant this Act, as determined by the Secretaries;

(4) manage reverse flow in the Old and Middle Rivers as prescribed by the biological opinions issued by the United States Fish and Wildlife Service on December 15, 2008, for Delta smelt and by the National Marine Fisheries Service on June 4, 2009, for salmonids, or any successor biological opinions, to minimize water supply reductions for the Central Valley Project and the State Project, and issue guidance no later than December 31, 2015 directing their employees to take all steps necessary to manage flow in accordance with this paragraph;

(5) as soon as practicable after the date of enactment of this Act and pursuant to existing authority available to the Secretary of the Interior, participate in, issue grants, or otherwise provide funding for pilot projects to increase water in reservoirs in regional river basins experiencing extreme, exceptional, or sustained drought that have a direct impact on the water supply of the State, including the Colorado River Basin, on the condition that any participation, grant, or funding by the Secretary of the Interior with respect to the Upper Division shall be with or to the respective State; and

(6) use all available scientific tools to identify any changes to real-time operations of the Bureau of Reclamation, State, and local water projects that could result in the availability of additional water supplies.

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SEC. 309. TEMPORARY OPERATIONAL FLEXIBILITY  
FOR FIRST FEW STORMS OF 2015 WATER YEAR.

(a) Findings:

(1) During the 2014 water year, operations of the Central Valley Project and the State Water Project, the incidental take of adult Delta smelt was zero; of juvenile Delta smelt, 78 (7.7% of the incidental take limit); of winter run chinook, 339 (1.4% of the incidental take limit); of spring run chinook, zero; and of steelhead, 261 (8.7% of the incidental take limit).

(2) The Central Valley Project and State Water Project exceeded a Old and Middle River flow of -5,000 cubic feet per second over a 14-day average for brief periods after three storm events in February and March 2014, as a result of increased pumping, but did not cause substantially increased take of smelt or salmon.

(3) Hydrological conditions in dry years, such as the 2014 water year, have not triggered water pumping restrictions pursuant to the 2008 smelt biological opinion.

(4) The Secretaries should be allowed more flexibility to increase pumping levels without causing significant risk to the listed species or weakening other environmental protections.

(5) Given California's severe drought conditions, significant groundwater withdrawals for irrigation due to lack of surface water supplies, and the depletion of water supplies in reservoirs, it is imperative that the Secretaries exercise the flexibility provided herein to capture the maximum amount of storm flows when and if they occur in the 2015 water year, and provide for the diversion of those supplies to the Central Valley Project and State Water Project so that farms, businesses, and homes in drought-stricken areas will have an opportunity to bolster their meager supplies when water is available.

(b) In general. Consistent with avoiding additional adverse effects upon listed fish species beyond the range of those authorized under the Endangered Species Act and other environmental protections under subsection (e), the Secretaries shall authorize the Central Valley Project and the State Water Project, combined, to operate at levels that result in Old and Middle River flows at up to -7500 cubic feet per second (based on United States Geological Survey gauges on Old and Middle Rivers) daily average for up to 21 cumulative days after October 1, 2014, as described in subsection (c).

(c) Days of temporary operational flexibility. The temporary operational flexibility described in subsection (b) shall be authorized on days that the California Department of Water Resources determines the daily average river flow of the Sacramento River is at, or above, 17,000 cubic feet per second as measured at the Sacramento River at Freeport gauge maintained by the United States Geologic Survey.

(d) Compliance with ESA authorizations. In carrying out this section, the Secretaries may continue to impose any requirements under the biological opinions during any period of temporary operational flexibility as they determine are reasonably necessary to avoid additional adverse effects on listed fish species beyond the range of those authorized under the Endangered Species Act.

(e) Other environmental protections.

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(1) The Secretaries' actions under this section shall be consistent with applicable regulatory requirements under state law, including State Water Resources Control Board Decision 1641, as it may be implemented in any given year;

(2) During the first flush of sediment out the Delta during the 2015 water year, OMR flow may be managed at rates less negative than -5000 cubic feet per second for a minimum duration to avoid movement of adult delta smelt (*Hypomesus transpacificus*) to areas in the southern Delta that would be likely to increase entrainment at Central Valley Project and State Water Project pumping plants;

(3) This section shall not have any effect on the applicable requirements of the salmonid biological opinion from April 1 to May 31, unless the Secretary of Commerce finds that some or all of such applicable requirements may be adjusted during this time period to provide emergency water supply relief without resulting in additional adverse effects beyond those authorized under the Endangered Species Act.

(4) During operations under this section, the Commissioner of Reclamation, in coordination with the Fish and Wildlife Service, National Marine Fisheries Service, and California Department of Fish and Wildlife, shall undertake a monitoring program and other data gathering to insure take limits levels are not exceeded, and to identify potential negative impacts and actions necessary to mitigate any impacts of the temporary operational flexibility to species listed as threatened or endangered under the Endangered Species Act, 16 U.S.C. 1531-1544; and

(5) The Commissioner is authorized to take any action, including the transfer of appropriated funds between accounts that, in the Commissioner's judgment, are necessary to mitigate the impacts of such operations as long as any such mitigation is consistent with the requirements of this section.

(f) Technical adjustments to target period. If, before temporary operational flexibility has been implemented on 21 cumulative days, the Secretaries operate the Central Valley Project and the State Water Project combined at levels that result in Old and Middle River flows less negative than -7500 cubic feet per second during days of temporary operational flexibility as defined in subsection (c), the duration of such operation shall not be counted toward the 21 cumulative days specified in subsection (b).

(g) Emergency consultation; effect on running averages.

(1) If necessary to implement the provisions of this section, the Commissioner shall use the emergency consultation procedures under the Endangered Species Act and its implementing regulation at 50 CFR 402.05 to temporarily adjust the operating criteria under the biological opinions, solely for the 21 days of temporary operational flexibility—

(A) no more than necessary to achieve the purposes of this section consistent with the environmental protections in subsections (d) and (e); and

(B) including, as appropriate, adjustments to ensure that the actual flow rates during the periods of temporary operational flexibility do not count toward the 5-day and 14-day running averages of tidally filtered daily Old and Middle River flow requirements under the biological opinions.

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(2) Following the conclusion of the 21 days of temporary operational flexibility, the Commissioner shall not reinitiate consultation on these adjusted operations if the effects on listed fish species of these operations under this section remain within the range of those authorized under the Endangered Species Act.

(h) Level of detail required for analysis. In articulating the determinations required under this section, the Secretaries shall fully satisfy the requirements herein but shall not be expected to provide a greater level of supporting detail for the analysis than feasible to provide within the short time frame permitted for timely decision-making in response to changing conditions in the Delta.

(i) Duration. This section shall expire on September 30, 2015.

## SEC. 310. EXPEDITING WATER TRANSFERS.

(a) In General.—Section 3405(a) of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4709(a)) is amended—

(1) by redesignating paragraphs (1) through (3) as paragraphs (4) through (6), respectively;

(2) in the matter preceding paragraph (4) (as so designated)—

(A) in the first sentence, by striking “In order to” and inserting the following:

“(1) IN GENERAL.—In order to”; and

(B) in the second sentence, by striking “Except as provided herein” and inserting the following:

“(3) TERMS.—Except as otherwise provided in this section”; and

(3) by inserting before paragraph (3) (as so designated) the following:

“(2) EXPEDITED TRANSFER OF WATER.—The Secretary shall take all necessary actions to facilitate and expedite transfers of Central Valley Project water in accordance with—

“(A) this Act;

“(B) any other applicable provision of the reclamation laws; and

“(C) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).”;

(4) in paragraph (4) (as so designated)—

(A) in subparagraph (A), by striking “to combination” and inserting “or combination”; and

(B) by striking “3405(a)(2) of this title” each place it appears and inserting “(5)”;

(5) in paragraph (5) (as so designated), by adding at the end the following:

“(E) The contracting district from which the water is coming, the agency, or the Secretary shall determine if a written transfer proposal is complete within 45 days after the date of submission of the proposal. If the contracting district or agency or the Secretary determines that the proposal is incomplete, the district or agency or the Secretary shall state with specificity what must be added to or revised for the proposal

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to be complete.”; and

(6) in paragraph (6) (as so designated), by striking “3405(a)(1)(A)-(C), (E), (G), (H), (I), (L), and (M) of this title” and inserting “(A) through (C), (E), (G), (H), (I), (L), and (M) of paragraph (4)”.

(b) Conforming Amendments.—The Central Valley Project Improvement Act (Public Law 102–575) is amended—

(1) in section 3407(c)(1) (106 Stat. 4726), by striking “3405(a)(1)(C)” and inserting “3405(a)(4)(C)”; and

(2) in section 3408(i)(1) (106 Stat. 4729), by striking “3405(a)(1) (A) and (J) of this title” and inserting “subparagraphs (A) and (J) of section 3405(a)(4)”

**SEC. 311. WARREN ACT CONTRACTS.**

[To be supplied.]

**SEC. 312. ADDITIONAL WARREN ACT CONTRACTS.**

[To be supplied.]

**TITLE IV—INCREASING WATER STORAGE**

**SEC. 401. FINDINGS.**

Congress finds that—

(1) the record drought conditions being experienced in the State as of the date of enactment of this Act are—

(A) expected to recur in the future; and

(B) likely to do so with increasing frequency;

(2) water storage is an indispensable and integral part of any solution to address the long-term water challenges of the State;

(3) Congress authorized relevant feasibility studies for 4 water storage projects in the State, including projects for—

(A) enlargement of Shasta Dam in Shasta County under section 2(a) of Public Law 96–375 (94 Stat. 1506), as reaffirmed under section 103(d)(1)(A)(i)(I) of Public Law 108–361 (118 Stat. 1684);

(B) enlargement of Los Vaqueros Reservoir in Contra Costa County under section 215 of Public Law 108–7 (117 Stat. 147), as reaffirmed under section 103(d)(1)(A)(i)(II) of Public Law 108–361 (118 Stat. 1684);

(C) construction of North-of-Delta Offstream Storage (Sites Reservoir) in Colusa County under section 215 of Public Law 108–7 (117 Stat. 147), as reaffirmed under section 103(d)(1)(A)(ii)(I) of Public Law 108–361 (118 Stat. 1684); and



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(D) construction of the Upper San Joaquin River storage (Temperance Flat) in Fresno and Madera Counties under section 215 of Public Law 108–7 (117 Stat. 147), as reaffirmed under section 103(d)(1)(A)(ii)(II) of Public Law 108–361 (118 Stat. 1684);

(4) (A) as of the date of enactment of this Act, it has been more than 10 years since the authorization of the feasibility studies referred to in paragraph (3); but

(B) complete and final feasibility studies have not been prepared for any of those water storage projects;

(5) as of August 2014, only 2 of the 4 projects referred to in paragraph (3) have completed draft feasibility studies;

(6) the slow pace of work on completion of the feasibility studies for those 4 water storage projects is—

(A) unjustified; and

(B) of deep concern; and

(7) there is significant public interest in, and urgency with respect to, completing all feasibility studies and environmental reviews for the water storage projects referred to in paragraph (3), given the critical need for that infrastructure to address the water challenges of the State.

**SEC. 402. CALFED STORAGE FEASIBILITY STUDIES.**

(a) In General.—Notwithstanding subparagraph (B)(i) of section 103(d)(1) of Public Law 108–361 (118 Stat. 1684), the Secretary of the Interior, acting through the Commissioner of Reclamation (referred to in this title as the “Secretary”), shall complete a final feasibility study and any other applicable environmental review documents for the project described in—

(1) subparagraph (A)(i)(I) of that section by not later than December 31, 2014;

(2) subparagraph (A)(ii)(II) of that section by not later than July 31, 2015.

(b) Environmental Reviews.—In carrying out subsection (a), the Secretary—

(1) shall ensure that—

(A) all applicable reviews, including reviews required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), are completed as expeditiously as practicable; and

(B) the shortest applicable process under that Act is used, including in the completion of—

(i) feasibility studies;

(ii) draft environmental impact statements; and

(iii) final environmental impact statements; and

(2) shall not be required to complete a draft or final environmental impact statement if the Commissioner of Reclamation determines, and the Secretary concurs, that the project fails to meet applicable Federal cost-benefit requirements or standards.

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(c) Accountability.—

(1) If the Bureau of Reclamation determines that an environmental review document for the water storage projects referenced in of Section 103(d)(1) of P.L. 108-361 will not be completed according to the schedule specified in subsection (a), the Bureau shall notify the Senate Committee on Energy and Natural Resources, the Senate Appropriations Subcommittee on Energy and Water Development, and the House of Representatives Transportation and Infrastructure Committee within 14 days of the determination. The notification shall include:

(A) An explanation of the delay;

(B) The anticipated length of the delay and the revised completion date;

(C) The steps that the Bureau will take to mitigate the delay, including, but not limited to, a request to reprogram existing funds appropriated to the Bureau to meet the revised completion deadline.

(2) The Bureau of Reclamation shall carry out the procedures in subsection (a) for each subsequent delay beyond the revised completion deadline.

**SEC. 403. WATER STORAGE PROJECT CONSTRUCTION.**

(a) The Secretary, acting through the Commissioner of the Bureau of Reclamation, may partner or enter into an agreement on the water storage projects identified in section 103(d)(1) of the Water Supply Reliability and Environmental Improvement Act (Public Law 108-361) (and Acts supplemental and amendatory to the Act) with local joint powers authorities formed pursuant to State law by irrigation districts and other local water districts and local governments within the applicable hydrologic region, to advance those projects.

(b) [PLACEHOLDER FOR AUTHORIZATION ISSUE]

**SEC. 404. OTHER STORAGE FEASIBILITY STUDIES.**

(a) Definition of Qualifying Project.—In this section, the term “qualifying project” means new surface water storage projects constructed on lands administered by the Department of the Interior in a State in which the Bureau of Reclamation has jurisdiction, exclusive of any easement, right-of-way, lease, or any private holding.

(b) Lead Agency.—

(1) QUALIFYING PROJECTS WITHIN JURISDICTION OF BUREAU OF RECLAMATION.—The Bureau of Reclamation shall serve as the lead agency for purposes of coordinating all reviews, analyses, opinions, statements, permits, licenses, and other approvals or decisions required under Federal law (including regulations) to construct qualifying projects within the jurisdiction of the Bureau.

(2) QUALIFYING PROJECTS OUTSIDE JURISDICTION OF BUREAU OF RECLAMATION.—If the site of a qualifying project is not located in a State in which the Bureau of Reclamation has jurisdiction, the Secretary shall, by not later than 45 days after the date of receipt of an application for the qualifying project—

(A) designate an alternate agency within the Department of the Interior to serve as the lead agency for purposes of coordinating all reviews, analyses, opinions,

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statements, permits, licenses, and other approvals or decisions required under Federal law (including regulations) to construct the qualifying project; or

(B) in consultation with the heads of other Federal departments and agencies, identify the appropriate lead agency for the qualifying project.

(c) Cooperating Agencies.—

(1) FEDERAL DEPARTMENTS AND AGENCIES.—The lead agency designated under paragraph (1) or (2) of subsection (b) shall—

(A) as soon as practicable after receipt of an application for a qualifying project, identify any Federal department or agency that may have jurisdiction over a review, permit, license, approval, or decision required for the qualifying project under applicable Federal laws (including regulations); and

(B) as soon as practicable after the date of identification under subparagraph (A)—

(i) notify each applicable department or agency of the identification; and

(ii) designate the department or agency as a cooperating agency, unless the department or agency—

(I) has no jurisdiction or authority with respect to the qualifying project;

(II) has no expertise or information relevant to the qualifying project or any review, permit, license, approval, or decision associated with the qualifying project; or

(III) does not intend—

(aa) to submit comments regarding the qualifying project; or

(bb) to conduct any review of the qualifying project or make any decision with respect to the qualifying project in a manner other than in cooperation with the Bureau of Reclamation.

(2) STATES.—A State in which a qualifying project is proposed to be carried out may elect, consistent with Federal and State law, to participate as a cooperating agency, if the lead agency designated for the proposed qualifying project under paragraph (1) or (2) of subsection (b) determines that the applicable agency of the State—

(A) has jurisdiction over the qualifying project under applicable Federal or State law;

(B) is required to conduct or issue a review of the qualifying project; and

(C) is required to make a determination regarding issuing a permit, license, or approval of the qualifying project.

(d) Duties of Lead Agency.—

(1) IN GENERAL.—Not later than 30 days after the date of receipt of an application for approval of a qualifying project, the lead agency shall hold a meeting among the applicant, the lead agency, and all cooperating agencies to establish, with respect to the qualifying project, all applicable—

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- (A) requirements;
- (B) review processes; and
- (C) stakeholder responsibilities.

(2) SCHEDULE.—

(A) ESTABLISHMENT.—Not later than 30 days after the date of the meeting under paragraph (1), the lead agency, in consultation with the attendees of the meeting, shall establish a schedule for completion of the qualifying project, taking into consideration, among other relevant factors—

- (i) the responsibilities of cooperating agencies under applicable laws and regulations;
- (ii) the resources available to the cooperating agencies and non-Federal project stakeholders;
- (iii) the overall size and complexity of the qualifying project;
- (iv) the overall schedule for, and cost of, the qualifying project; and
- (v) the sensitivity of the natural and historic resources that may be affected by the qualifying project.

(B) REQUIREMENTS.—On establishment of a schedule for a qualifying project under subparagraph (A), the lead and cooperating agencies shall—

- (i) to the maximum extent practicable, adhere to the schedule; and
- (ii) submit to the Committee on Environment and Public Works of the Senate and the Committee on Natural Resources of the House of Representatives on a semiannual basis a report describing any delays in the schedule, including a description of—
  - (I) the reasons for the delay;
  - (II) the actions that the lead and cooperating agencies will take to minimize the delay; and
  - (III) a revised schedule for the qualifying project, if applicable.

(e) Environmental Reviews.—

(1) SINGLE, UNIFIED ENVIRONMENTAL REVIEW DOCUMENT.—

(A) IN GENERAL.—The lead agency with respect to a qualifying project, in consultation with appropriate stakeholders and cooperating agencies, shall determine whether a single, unified environmental review document relating to the qualifying project is sufficient to comply with applicable Federal laws (including regulations), including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(B) ACTION ON DECLINATION.—If, after consultation under subparagraph (A), a lead agency determines not to adopt a single, unified environmental review document relating to a qualifying project—

- (i) the lead agency shall—

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- 1 (I) document the reasons for the determination; and
- 2 (II) submit to the Secretary a report describing those reasons; and
- 3 (ii) the Secretary may require the adoption of a single, unified document at the
- 4 discretion of the Secretary, based on good cause.
- 5 (2) ENVIRONMENTAL ASSESSMENT.—Except as provided under paragraph (4), if the lead
- 6 agency with respect to a qualifying project, in consultation with cooperating agencies,
- 7 determines that an environmental assessment is sufficient to comply with the requirements
- 8 of this subsection and other applicable Federal laws (including regulations)—
- 9 (A) the public comment period for a draft environmental assessment shall be no
- 10 more than 60 days after publication in the Federal Register of notice of the public
- 11 issuance of that draft; and
- 12 (B) the lead agency shall issue the final environmental assessment by not later than
- 13 180 days after the end of the period for public comments on the draft environmental
- 14 assessment.
- 15 (3) ENVIRONMENTAL IMPACT STATEMENT.— Except as provided under paragraph (4), if
- 16 the lead agency with respect to a qualifying project, in consultation with cooperating
- 17 agencies, determines that an environmental impact statement is required to comply with the
- 18 requirements of this subsection and other applicable Federal laws (including regulations)—
- 19 (A) the public comment period for a draft environmental impact statement shall be
- 20 no more than 60 days after publication in the Federal Register of notice of the public
- 21 issuance of that draft; and
- 22 (B) the lead agency shall issue the final environmental impact statement by not later
- 23 than 1 year after the end of the period for public comments on the draft environmental
- 24 impact statement.
- 25 (4) MODIFICATION OF SCHEDULE.—In carrying out paragraphs (2) and (3),
- 26 (A) the lead agency with respect to a qualifying project may modify the schedule of
- 27 the qualifying project if:
- 28 (i) the Federal lead agency can demonstrate good cause, such as the need for
- 29 additional time to comply with other statutory or regulatory requirements other
- 30 than the National Environmental Policy Act of 1969, and the head of that agency
- 31 submits to Congress a written determination describing the cause and reasons for
- 32 the modification no less than 30 days before the original scheduled deadline; or
- 33 (ii) the Federal lead agency, the project sponsor, the joint lead agency (as
- 34 applicable), and all participating and cooperating agencies agree to such
- 35 modification.
- 36 (B) no modification pursuant to subparagraph (4)(A) shall postpone the issuance of a
- 37 final environmental assessment by more than 1 year, or a final environmental impact
- 38 statement by more than 2 years, unless the conditions under (4)(A)(i) or (4)(A)(ii) are
- 39 met.
- 40 (C) If a modification occurs pursuant to this paragraph, the Federal lead agency shall

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issue and adhere to the revised schedule unless the conditions under (4)(A)(i) or (4)(A)(ii) are met.

(5) REQUIREMENTS.—On commencement of the environmental review process under this subsection, the lead and cooperating agencies shall, as soon as practicable—

(A) make available to all stakeholders of the qualifying project information regarding—

(i) the environmental and socioeconomic resources located within the area of the qualifying project; and

(ii) the general locations of the alternatives under consideration; and

(B) identify any issues of concern regarding the potential environmental or socioeconomic effects of the qualifying project, including any issues that could substantially delay or prevent an agency from granting a permit or other approval that is needed for a study relating to the qualifying project.

(f) Concurrent Review Actions.—

(1) IN GENERAL.—Any review, analysis, permit, license, approval, or decision regarding a qualifying project made by a Federal, State, or local government agency shall be—

(A) conducted, to the maximum extent practicable, concurrently with any other applicable government agency; and

(B) incorporated in the schedule for the qualifying project under subsection (d)(2).

(2) REQUIREMENT.—The lead and cooperating agencies for a qualifying project shall formulate and implement administrative, policy, and procedural mechanisms to enable adherence to the schedule for the qualifying project in a timely, coordinated, and environmentally responsible manner.

(3) GUIDANCE.—The Secretary shall issue guidance regarding the use of programmatic approaches to carry out the environmental review process that, to the maximum extent practicable—

(A) eliminates repetitive discussions of the same issues;

(B) focuses on the actual issues ripe for analysis at each level of review;

(C) establishes a formal process for coordinating with participating and cooperating agencies, including the establishment of a list of all data required to carry out an environmental review process; and

(D) complies with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and all other applicable laws and regulations.

(g) Administrative Record and Data Management.—

(1) IN GENERAL.—The lead agency shall—

(A) be responsible for compiling the administrative record of the information used as the basis for decisions relating to a qualifying project; and

(B) to the maximum extent practicable and consistent with Federal law, make

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available all data regarding the qualifying project in a format that is accessible via electronic means for project stakeholders, cooperating agencies, and the public.

(2) REPORTS.—Not less frequently than once each year, the lead agency shall submit a progress report regarding a qualifying project to project stakeholders, cooperating agencies, the Committee on Environment and Public Works of the Senate, and the Committee on Natural Resources of the House of Representatives.

(h) Participation by Non-Federal Project Sponsors.—

(1) APPLICATION TO SERVE AS COOPERATING AGENCY.—A non-Federal sponsor of a qualifying project may submit to the lead Secretary an application to serve as a cooperating agency of the qualifying project for purposes of preparing any necessary documents relating to the qualifying project, including an environmental review, if—

(A) the non-Federal sponsor is a public agency as defined under the laws of the state in which the agency is located;

(B) the non-Federal sponsor agrees to adhere to—

(i) all required Federal laws (including regulations) in carrying out the qualifying project; and

(ii) all decisions regarding the qualifying project that have been agreed on by other stakeholders of the qualifying project; and

(C) the applicable lead agency certifies that participation by the non-Federal sponsor will not inappropriately bias the qualifying project in favor of the non-Federal sponsor.

(2) FUNDS.—Any funds contributed by a non-Federal sponsor to a qualifying project—

(A) may be accepted to maintain or accelerate progress on the qualifying project, subject to the condition that the Secretary shall—

(i) review the use of the funds; and

(ii) certify in writing that the funds—

(I) are used solely to complete applicable environmental reviews; and

(II) do not unduly influence any permit or approval decision regarding the qualifying project; and

(B) shall be applied toward the non-Federal cost-share of the qualifying project.

(i) Applicability to Calfed Storage Studies.—For any feasibility study referred to in section 401(3), this section shall apply to all activities to be carried out under the study on or after the date of enactment of this Act that would lead to congressional authorization of an applicable project for construction.

**SEC. 405. DAM SAFETY PROJECTS WITH INCREASED STORAGE COMPONENT.**

(a) Additional Project Benefits.—The Reclamation Safety of Dams Act of 1978 is amended—

(1) in section 3 (43 U.S.C. 507), by striking “Construction” and inserting “Except as

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provided in section 5B, construction”; and

(2) by inserting after section 5A (43 U.S.C. 509a) the following:

**“SEC. 5B. ADDITIONAL PROJECT BENEFITS.**

“(a) In General.—Notwithstanding section 3, if the Secretary, in the judgment of the Secretary, makes a determination described in subsection (b), the Secretary is authorized to develop any additional project benefit—

“(1) through the construction of new or supplementary works on a project in conjunction with the activities carried out by the Secretary pursuant to section 2; and

“(2) subject to the conditions described in the feasibility study relating to the project.

“(b) Description of Determination.—A determination referred to in subsection (a) is a determination by the Secretary that—

“(1) an additional project benefit, including but not limited to additional conservation storage capacity, is—

“(A) necessary; and

“(B) in the interests of the United States; and

“(2) the project benefit proposed to be carried out is—

“(A) feasible; and

“(B) not inconsistent with the purposes of this Act.

“(c) Requirements.—The costs associated with developing an additional project benefit under this section shall be—

“(1) allocated to entity or entities benefitting from the additional conservation storage capacity, subject to agreement between the state and federal funding agencies on such allocations; and

“(2) repaid in accordance with all applicable provisions of Federal reclamation law (the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act (43 U.S.C. 371 et seq.).”.

(b) San Luis Reservoir Expansion.—Section 103(f)(1)(A) of Public Law 108–361 (118 Stat. 1694) is amended—

(1) by striking “Funds” and inserting the following:

“(i) IN GENERAL.—Funds”; and

(2) by adding at the end the following:

“(ii) ENVIRONMENTAL REVIEWS AND FEASIBILITY STUDY.—The Commissioner of Reclamation shall submit to Congress—

“(I) an expansion draft environmental impact statement and feasibility study relating to the San Luis Reservoir by not later than April 1, 2016; and

“(II) a final environmental impact statement relating to the San Luis



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Reservoir by not later than December 31, 2016.”.

**SEC. 406. UPDATING WATER OPERATIONS MANUALS  
FOR NON-FEDERAL PROJECTS.**

(a) Definitions.—In this section:

(1) NON-FEDERAL PROJECT.—

(A) IN GENERAL.—The term “non-Federal project” means a non-Federal reservoir project operated for flood control in accordance with rules prescribed by the Secretary pursuant to section 7 of the Act of December 22, 1944 (commonly known as the “Flood Control Act of 1944”) (58 Stat. 890, chapter 665).

(B) EXCLUSION.—The term “non-Federal project” does not include any dam or reservoir owned by—

(i) the Bureau of Reclamation; or

(ii) the Corps of Engineers.

(2) OWNER.—The term “owner” with respect to a non-Federal project, does not include—

(A) the Secretary;

(B) the Secretary of the Interior; or

(C) the head of any other Federal department or agency, notwithstanding any Federal monetary contribution made toward the construction cost of the relevant non-Federal project, if the contribution is predicated a on flood control or other specific benefit.

(3) SECRETARY.—The term “Secretary” means the Secretary of the Army.

(b) Review by Secretary.—

(1) IN GENERAL.—Not later than 1 year after the date of receipt of a request from the owner of a non-Federal project, the Secretary, in consultation with the owner, shall review the water control manual and flood control rule curves and any operational or structural modifications proposed by the owner, including the use of improved weather forecasting and run-off forecasting methods, to enhance the existing purposes of the non-Federal project.

(2) REPORT.—Not later than 90 days after the date of completion of a review under paragraph (1), the Secretary shall submit to the owner of the applicable non-Federal project a report describing the results of the review.

(3) PRIORITY.—In carrying out of this subsection, the Secretary shall give priority to review and revision of water control manuals and flood control rule curves for any non-Federal project—

(A) that is located in a State in which a drought emergency has been declared during the 1-year period ending on the date of review by the Secretary;

(B) the owner of which has submitted to the Secretary a formal request to review or revise the operations manual or rule curves to accommodate new watershed data or

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proposed project modifications or operational changes;

(C) the water control manual and hydrometeorological information establishing the flood control rule curves of which have not been revised during the 20-year period ending on the date of review by the Secretary;

(D) with respect to which a completed probable maximum flood analysis or other data indicates that revisions of the project control manual or rule curves are likely to enhance water supply benefits and flood control operations; and

(E) modifications or operational changes proposed by the owner of which are likely to enhance water supply benefits and flood control operations.

(4) NON-FEDERAL CONTRIBUTIONS.—The Secretary may accept non-Federal funds for all or a portion of the cost of carrying out a review or revision of water control manuals and rule curves for non-Federal projects under this subsection.

## SEC. 407. CENTRAL VALLEY PROJECT.

### (a) Cooperative Agreements.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, to determine the feasibility of an agreement for long-term use of an existing or expanded non-Federal storage or conveyance facility to augment Federal water supply, ecosystem, and operational flexibility benefits, the Secretary shall offer to enter into cooperative agreements with non-Federal entities to provide replacement water supplies for drought relief for—

(A) contractors of the Central Valley Project (as defined in section 3403 of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706));

(B) units of the National Wildlife Refuge System;

(C) State wildlife areas; and

(D) private wetland areas.

### (2) REQUIREMENTS.—A cooperative agreement under this subsection shall—

(A) include the purchase of storage capacity in non-Federal facilities from willing sellers; and

(B) provide reimbursement for the temporary use of available capacity in existing above-ground, off-stream storage and associated conveyance facilities owned by local water agencies.

(b) Report.—Not later than 2 years after the date of enactment of this Act, the Secretary shall submit to the Chief of the National Wildlife Refuge System and contractors of the Central Valley Project a report describing the feasibility of the agreement for long-term use described in subsection (a)(1).

## TITLE V—WATER RIGHTS PROTECTIONS

## SEC. 501. PROTECTIONS FOR STATE WATER PROJECT

**Commented [A ]:** The agencies have not had a chance to fully analyze this Title. We expect the House to provide further suggestions, and we will seek the agencies' technical feedback on the entire title with the House's suggestions included.

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1 **CONTRACTORS.**

2 If, as a result of the application of this Act, the California Department of Fish and Wildlife:

3 (a) revokes the consistency determination pursuant to California Fish and Game Code section  
4 2080.1;

5 (b) amends or issues a new consistency determination pursuant to California Fish and Game  
6 Code section 2080.1 in a manner that results in reduced water supply to the State Water Project  
7 as compared with the water supply available under the Smelt Biological Opinion and the  
8 Salmonid Biological Opinion; or

9 (c) requires take authorization under section 2081 for operation of the State Water Project in a  
10 manner that results in reduced water supply to the State Water Project as compared with the  
11 water supply available under the Smelt Biological Opinion and the Salmonid Biological Opinion,

12 then, the water supply benefits of such action by the California Department of Fish and  
13 Wildlife accruing to the Central Valley Project, if any, shall be shared equally with the State  
14 Water Project.

15 **SEC. 502. AREA OF ORIGIN PROTECTIONS.**

16 (a) The Secretary of the Interior (Secretary) is directed in the operation of the Central Valley  
17 Project (CVP) to adhere to California's water rights laws governing water rights priorities by  
18 honoring water rights senior to those held by the United States for operation of the CVP,  
19 regardless of the source of priority, including any appropriative water rights initiated prior to  
20 December 19, 1914, as well as water rights and other priorities perfected or to be perfected  
21 pursuant to California Water Code Part 2 of Division 2, Article 1.7 (commencing with section  
22 1215 of Chapter 1 of Part 2 of Division 2, Sections 10505, 10505.5, 11128, 11460, 11461, 11462  
23 and 11463, and Sections 12200 to 12220, inclusive).

24 (b) Any action that requires that diversions be bypassed or that involves the release of water  
25 from any CVP water storage facility taken by the Secretary or the Secretary of the Department of  
26 Commerce pursuant to Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531, et  
27 seq.) shall be applied in a manner that is consistent with water rights priorities established by  
28 California law.

29 **SEC. 503. NO REDIRECTED ADVERSE IMPACTS.**

30 The Secretary shall ensure that, except as otherwise provided for in a water service or  
31 repayment contract, actions taken in compliance with legal obligations imposed pursuant to or as  
32 a result of this Act, including, but not limited to, such actions under the Endangered Species Act  
33 of 1973 (16 U.S.C. § 1531 et seq.) and other federal laws, shall not cause redirected adverse  
34 water supply or fiscal impacts to those within the Sacramento River Watershed or the State  
35 Water Project.

36 **SEC. 504. EFFECT ON STATE LAWS.**

37 Nothing in this Act preempts any State law in effect on the date of enactment of this Act,  
38 including area of origin and other water rights protections.

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**TITLE VI—MISCELLANEOUS**

**SEC. 601. AUTHORIZED SERVICE AREA.**

(a) In General.—The authorized service area of the Central Valley Project authorized under the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706) shall include the area within the boundaries of the Kettleman City Community Services District, California, as in existence on the date of enactment of this Act.

(b) Long-term Contract.—

(1) IN GENERAL.—Notwithstanding the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706) and subject to paragraph (2), the Secretary of the Interior, in accordance with the reclamation laws, shall enter into a long-term contract with the Kettleman City Community Services District, California, under terms and conditions mutually agreeable to the parties, for the delivery of up to 900 acre-feet of Central Valley Project water for municipal and industrial use.

(2) LIMITATION.—Central Valley Project water deliveries authorized under the contract entered into under paragraph (1) shall be limited to the minimal quantity necessary to meet the immediate needs of the Kettleman City Community Services District, California, in the event that local supplies or State Water Project allocations are insufficient to meet those needs.

(c) Permit.—The Secretary shall apply for a permit with the State for a joint place of use for water deliveries authorized under the contract entered into under subsection (b) with respect to the expanded service area under subsection (a), consistent with State law.

(d) Additional Costs.—If any additional infrastructure, water treatment, or related costs are needed to implement this section, those costs shall be the responsibility of the non-Federal entity.

**SEC. 602. RESCHEDULED WATER.**

(a) In General.—In connection with operations of the Central Valley Project, California, if the San Luis Reservoir does not fill by the last day of February of any year, the Secretary of the Interior shall permit any entity with an agricultural water service or repayment contract for the delivery of water from the Delta Division or the San Luis Unit to reschedule into the immediately following contract year (March 1 through the last day of February) any unused Central Valley Project water previously allocated for irrigation purposes.

(b) Apportionment.—If water remaining in Federal storage in San Luis Reservoir on the last day of February of any year is insufficient to meet all rescheduling requests under subsection (a), the Secretary of the Interior shall, based on contract quantity, apportion among all contractors that request to reschedule water all water remaining in San Luis Reservoir on the last day of February of the applicable year.

(c) Availability of Additional Water.—The Secretary shall make all reasonable efforts to make available additional rescheduled water, if the efforts do not interfere with the Central Valley Project operations in the contract year for which Central Valley Project water has been

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rescheduled.

**SEC. 603. FISHERIES DISASTER DECLARATION.**

[TO BE SUPPLIED.]

**SEC. 604. OVERSIGHT BOARD FOR RESTORATION FUND.**

(a) Report; Advisory Board.—Section 3407 of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4726) is amended by adding at the end the following:

“(g) Report on Expenditure of Funds.—

“(1) IN GENERAL.—For each fiscal year, the Secretary, in consultation with the Advisory Board, shall submit to Congress a plan for the expenditure of all of the funds deposited into the Restoration Fund during the preceding fiscal year.

“(2) CONTENTS.—The plan shall include an analysis of the cost-effectiveness of each expenditure.

“(h) Advisory Board.—

“(1) ESTABLISHMENT.—There is established the Restoration Fund Advisory Board (referred to in this section as the ‘Advisory Board’), which shall be composed of 14 members appointed by the Secretary.

“(2) MEMBERSHIP.—

“(A) IN GENERAL.—The Secretary shall appoint members to the Advisory Board that represent the various Central Valley Project stakeholders, of whom—

“(i) 3 members shall be agricultural users of the Central Valley Project;

“(ii) 2 members shall be municipal and industrial users of the Central Valley Project;

“(iii) 3 members shall be power contractors of the Central Valley Project;

“(iv) 1 member shall be a representative of a federal wildlife refuge that contracts for Central Valley Project water supplies with the Bureau of Reclamation;

“(v) 1 member shall represent nongovernmental organizations involved in the protection and restoration of California fisheries;

“(vi) 1 member shall represent the commercial fishing industry;

“(vii) 1 member shall represent the recreational fishing industry; and

“(viii) 2 members shall be appointed at the discretion of the Secretary.

“(B) OBSERVER.—The Secretary and the Secretary of Commerce may each designate a representative to act as an observer of the Advisory Board.

“(C) CHAIRMAN.—The Secretary shall appoint 1 of the members described in subparagraph (A) to serve as Chairman of the Advisory Board.

**Commented [A ]:** The agencies are still reviewing the contents of this section. We anticipate the House will provide further suggestions, and we intend to seek the agencies' technical feedback on this language as modified by the House's suggestions.

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1 “(3) TERMS.—The term of each member of the Advisory Board shall be 4 years.

2 “(4) DATE OF APPOINTMENTS.—The appointment of a member of the Panel shall be made  
3 not later than—

4 (A) the date that is 120 days after the date of enactment of this Act; or

5 (B) in the case of a vacancy on the Panel described in subsection (c)(2), the date  
6 that is 120 days after the date on which the vacancy occurs.

7 “(5) Vacancies.—

8 (A) IN GENERAL.—A vacancy on the Panel shall be filled in the manner in which  
9 the original appointment was made and shall be subject to any conditions that applied  
10 with respect to the original appointment.

11 (B) FILLING UNEXPIRED TERM.—An individual chosen to fill a vacancy shall be  
12 appointed for the unexpired term of the member replaced.

13 (C) EXPIRATION OF TERMS.—The term of any member shall not expire before the  
14 date on which the successor of the member takes office.

15 “(6) Removal—A Member of the Panel may be removed from office by the Secretary of  
16 the Interior.

17 “(7) Federal Advisory Committee Act. —The Panel shall not be subject to the  
18 requirements of the Federal Advisory Committee Act.

19 “(8) DUTIES.—The duties of the Advisory Board are—

20 “(A) to meet not less frequently than semiannually to develop and make  
21 recommendations to the Secretary regarding priorities and spending levels on projects  
22 and programs carried out under this title;

23 “(B) to ensure that any advice given or recommendation made by the Advisory  
24 Board reflects the independent judgment of the Advisory Board;

25 “(C) not later than December 31, 2015, and annually thereafter, to submit to the  
26 Secretary and Congress the recommendations under subparagraph (A); and

27 “(D) not later than December 31, 2015, and biennially thereafter, to submit to  
28 Congress a report that details the progress made in achieving the actions required  
29 under section 3406.

30 “(9) ADMINISTRATION.—With the consent of the appropriate agency head, the Advisory  
31 Board may use the facilities and services of any Federal agency.”

32 “(10) Cooperation and Assistance.—

33 (A) Upon request of the Panel Chairperson for information or assistance to facilitate  
34 the carrying out of this section, the Secretary of the Interior shall promptly provide such  
35 information, unless otherwise prohibited by law.

36 (B) Space and Assistance.—The Secretary of the Interior shall provide the Panel  
37 with appropriate and adequate office space, together with such equipment, office  
38 supplies, and communications facilities and services as may be necessary for the

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operation of the Panel, and shall provide necessary maintenance services for such offices and the equipment and facilities located therein.

**SEC. 605. WATER OPERATIONS REVIEW PANEL.**

(a) Establishment.—There is established a panel to be known as the “Water Operations Review Panel”.

(b) Membership.—

(1) COMPOSITION.—The Panel shall be composed of 5 members appointed by the Secretary of the Interior, in consultation with the Secretary of Commerce, of whom—

(A) 1 member shall be a former State elected official, who shall be the Chairperson of the Panel;

(B) 2 members shall be fisheries biologists, of whom—

(i) 1 member shall have expertise in Delta smelt; and

(ii) 1 member shall have expertise in salmonids; and

(C) 2 members shall be engineers with substantial expertise in water operations.

(2) RECOMMENDATIONS. —The Secretary of the Interior shall consider the recommendations

(A) of the Governor of the State for the member appointed under subparagraph (1)(A);

(B) of the Director of the California Department of Water Resources for one of the members appointed under subparagraph (1)(C).

(3) PROHIBITION ON FEDERAL GOVERNMENT EMPLOYMENT.—For at least three years prior to appointment to the Panel, an individual appointed to the Panel under paragraph (1) shall not have been an employee of the Federal Government.

(4) DATE OF APPOINTMENTS.—The appointment of a member of the Panel shall be made not later than—

(A) the date that is 120 days after the date of enactment of this Act; or

(B) in the case of a vacancy on the Panel described in subsection (c)(2), the date that is 120 days after the date on which the vacancy occurs.

(c) Term; Vacancies.—

(1) TERMS.—A member of the Panel shall be appointed for a term of 3 years, except that, with respect to the members first appointed under this section—

(A) the Chairperson shall be appointed for a term of 3 years;

(B) of the members appointed under subsection (b)(1)(B)—

(i) 1 member shall be appointed for a term of 1 year; and

(iii) 1 member shall be appointed for a term of 2 years;

(C) of the members appointed under subsection (b)(1)(C)—

(i) 1 member shall be appointed for a term of 1 year; and

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(ii) 1 member shall be appointed for a term of 2 years.

(2) VACANCIES.—

(A) IN GENERAL.—A vacancy on the Panel shall be filled in the manner in which the original appointment was made and shall be subject to any conditions that applied with respect to the original appointment.

(B) FILLING UNEXPIRED TERM.—An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

(3) EXPIRATION OF TERMS.—The term of any member shall not expire before the date on which the successor of the member takes office.

(d) Removal. —A Member of the Panel may be removed from office by the Secretary of the Interior.

(e) Federal Advisory Committee Act. —The Panel shall not be subject to the requirements of the Federal Advisory Committee Act.

(f) Duties.

(1) Annual Assessment and Report on Agencies' Operational Decisions under this Act.—

(A) IN GENERAL.—No later than November 30, 2015, and annually no later than November 30 thereafter, the Panel shall report an assessment of the agencies' operational decisions under this Act and recommendations for the prospective implementation of this Act to the following Congressional committees:

(i) Senate Committee on Environment and Public Works;

(ii) Senate Appropriations Subcommittee on Energy and Water Development;

(iii) House Natural Resources Committee; and

(iv) House Appropriations Subcommittee on Energy and Water Development.

(B) RETROSPECTIVE ASSESSMENT.—In making the retrospective assessment under paragraph (1), the Panel shall review and evaluate the Director of the Fish and Wildlife Service, Administrator of NOAA Fisheries, and Commissioner of Reclamation's —

(i) decisions in implementing this Act and other Federal laws applicable to the operations of the Central Valley Project and the State Water Project;

(ii) compliance with the Endangered Species Act in relation to operations of the Central Valley Project and the State Water Project; and

(iii) efforts to minimize water supply disruptions while complying with the Endangered Species Act and this Act.

(C) PROSPECTIVE RECOMMENDATIONS.—The Panel shall make recommendations for prospective actions and potential actions warranting further study to better achieve the purposes of this Act and the Endangered Species Act as applied to the operations of the Central Valley Project and the State Water Project, including proposals—

(i) that in combination, both increase the survival of listed species and increase water supplies for the Central Valley Project and the State Water Project;



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(ii) to increase the survival of listed fish species with little to no adverse effects on water supplies for the Central Valley Project and the State Water Project that would result from taking the specific proposed action recommended;

(iii) to increase such water supplies with little to no adverse effects on the survival of listed fish species; and

(iv) that respond to the annual Delta Science Program Independent Review Panel reports on the Long-term Operations Opinions.

(2) Five-Year Assessment on Effectiveness of Provisions of Act and Recommended Legislative Changes.

(A) IN GENERAL.—No later than five years after the date of enactment of this Act, and every five years thereafter, the Panel shall issue a report that

(i) evaluates the effectiveness of the provisions of this Act; and

(ii) makes legislative recommendations on:

(I) provisions of this Act that should be amended or repealed because they are not effective or for other reasons; and

(II) alternative legislation or modifications to this Act that could provide additional water supplies for the Central Valley Project and the State Water Project without reducing the survival of listed fish species.

(B) GOAL FOR RECOMMENDATIONS.—To the extent possible, the Panel shall submit legislative recommendations which in the aggregate would improve water supplies for the Central Valley Project and the State Water Project and increase the survival of listed fish species.

(C) REPORT TO CONGRESS.—The Panel shall submit its legislative recommendations to the Congressional committees listed in paragraph (1)(A).

(3) Submission of Comments and Proposals to Panel.—

(A) IN GENERAL.—In preparing the reports under paragraphs (1) and (2), the Panel shall invite comments and proposals from any interested person.

(B) SCHEDULE.—The Panel shall publish a schedule for receipt of comments and proposals under subparagraph (A), together with instructions for how to submit the comments and proposals.

(g) Cooperation and Assistance.—

(1) Upon request of the Panel Chairperson for information or assistance to facilitate the carrying out of this section, the Secretary of Commerce and the Secretary of the Interior shall promptly provide such information, unless otherwise prohibited by law.

(2) Space and Assistance.—The Secretary of the Interior shall provide the Panel with appropriate and adequate office space, together with such equipment, office supplies, and communications facilities and services as may be necessary for the operation of the Panel, and shall provide necessary maintenance services for such offices and the equipment and facilities located therein.

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1  
2 SEC. 606. CONTINGENCY IN EVENT OF CONTINUING  
3 RESOLUTION FOR FISCAL YEAR 2015.

4 The deadlines that apply to each respective Secretary, or agency, contained in sections 103(b),  
5 103(d), 202, 204, and 205 shall be extended by the number of days that any resolution providing  
6 continuing appropriations for the Fish and Wildlife Service or NOAA Fisheries for fiscal year  
7 2015 is in effect after January 1, 2015 if:

8 (1) such a resolution providing continuing appropriations for these agencies is enacted;

9 (2) the continuing resolution does not include funding for the agency actions prescribed  
10 in the sections of this Act specified above; and

11 (3) a funding shortfall remains for such agency actions after the Secretaries have  
12 consulted with the California Department of Water Resources, Central Valley Project and  
13 State Water Project contractors, and the Interagency Ecological Program.



**From:** Nelson, Damon  
**Sent:** Monday, October 6, 2014 3:59 PM  
**To:** Tom Birmingham  
**CC:** Bernhardt, David L.  
**Subject:** Re: Meeting Tomorrow

Come on by.

Sent from my iPhone

On Oct 6, 2014, at 6:20 PM, Tom Birmingham <[tbirmingham@westlandswater.org](mailto:tbirmingham@westlandswater.org)> wrote:

Damon,

David Bernhardt and I were hopeful that we could come by your office at 9:30 a.m. tomorrow to discuss the latest draft. Will that work for you?

Tom

**From:** Watts, John (Feinstein)  
**Sent:** Tuesday, October 7, 2014 9:06 AM  
**To:** 'Tom Birmingham'  
**CC:** Bernhardt, David L.  
**Subject:** FW: near term management actions

Tom, fyi, below is a list Brad Cavallo compiled of near-term management actions the agencies could take to benefit the through-Delta survival rates of listed salmonid species. The significance of this list is that if the agencies took these actions and aggregated the fishery benefits, under our language it would require them to scale some of the water supply restrictions in the salmonid biological opinion. The idea here is that while NOAA Fisheries is working on some of the bigger longer-term projects that could lead to bigger benefits for the fish and bigger changes to the biop's water supply restrictions, these measures could be used to achieve some water supply relief in the near term.

I gave this list to the House R staff when I met with them yesterday.

Tom, Can you call me when you get a chance to report on how the day is going?

Thanks.

---

**From:** Bradley Cavallo [mailto:bradley.cavallo@gmail.com]  
**Sent:** Thursday, September 04, 2014 1:48 AM  
**To:** Watts, John (Feinstein)  
**Cc:** Brenda W Burman  
**Subject:** near term management actions

Hi John. Its still Wednesday in California. ;)

Below is a pretty good start for a list of feasible, near-term actions to benefit ESA listed salmonids. Most of these are Delta-centric. I'm sure there are many other good ideas that I've overlooked.

Incidentally, I took many of these right out of the Columbia Hydropower BiOp support documents. Others are ideas that the ocean fishermen have been advocating.

-Brad

#### Near-term management actions likely to be beneficial to ESA listed salmonids

Combine behavioral barriers (floating panels) with rotary screw traps to capture and save juvenile salmonids as they are entrained into Clifton Court Forebay

Remove or modify pilings and pile dikes with low economic value when removal or modification would benefit juvenile salmonids and improve ecosystem health.

Temporarily suppress non-native macrophytes (habitat for non-native predators) along key migration corridors or at predation hot spots

Provide temporary predator exclusion fencing at points along key migration corridors or at predation hot spots

Reduce unnecessary down-lighting at manmade structures to minimize predation on juvenile salmonids at night

Conduct experimental reward tag fishing derbies to relocate juvenile salmonid predators in key areas or at predation hot spots

Conduct experimental predator removal in key areas or predation hot spots using gill nets, long lines or electrofishing

Implement pesticide and fertilizer best management practices to reduce estuarine and upstream sources of nutrients and toxic contaminants entering the estuary

Place behavioral barriers (floating panels) to deter migrating juvenile salmonids from entering lower survival routes

Protect remaining high-quality salmonid rearing habitat from degradation or modification

Implement real-time genetic monitoring and management to further minimize incidental take of spring and winter Chinook in ocean fisheries

Provide a pilot trap and barge program for juvenile salmonids entering the Delta from the San Joaquin River basin

Incorporate natural origin O. mykiss from above rim dams into steelhead hatchery broodstock (to improve fitness and allow genetic exchange, current hatchery steelhead stocks are heavily domesticated)

Deploy temporary weirs at key tributaries to minimize introgression and competition from straying hatchery origin steelhead

Deploy temporary weirs at key tributaries to protect spring Chinook from introgression and competition from hatchery fall Chinook

Bradley J. Cavallo  
President, Senior Scientist  
Cramer Fish Sciences  
13300 New Airport Road, Suite 102  
Auburn CA 95602

office 530.888.1443 ext. 11

mobile [REDACTED]

[www.fishsciences.net](http://www.fishsciences.net)

[www.genidaqs.com](http://www.genidaqs.com)

**From:** Tom Birmingham  
**Sent:** Tuesday, October 7, 2014 1:24 PM  
**To:** jessica.butler@mail.house.gov  
**CC:** David L. Bernhardt  
**Subject:** Fwd: Text suggestion

Jessica,

The following is a definition drafted by David Bernhardt. I hope this is helpful.

Tom

Sent from my iPhone

Begin forwarded message:

**From:** "Bernhardt, David L." <[DBernhardt@BHFS.com](mailto:DBernhardt@BHFS.com)>  
**Date:** October 7, 2014 at 1:40:52 PM EDT  
**To:** "Thomas W. Birmingham ([tbirmingham@westlandswater.org](mailto:tbirmingham@westlandswater.org))" <[tbirmingham@westlandswater.org](mailto:tbirmingham@westlandswater.org)>  
**Subject:** Text suggestion

Tom: Here is what I would suggest, I suspect you will tweak it, but I would like to start as broadly as possible.

SEC. 201. DEFINITIONS.

In this title:

- (1) ASSISTANT ADMINISTRATOR.—The term "Assistant Administrator" means the Assistant Administrator of NOAA Fisheries.
- (2) SECRETARY.—The term "Secretary" means the Secretary of Commerce.
- (3) Other Affected Interests. — The term "other affected interests" means the State of California, subdivisions of the State of California, public water agencies and the tens of millions of people who benefit directly and indirectly from the multipurpose operations of the Central Valley Project and the State Water Project.

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**From:** Nelson, Damon  
**Sent:** Tuesday, October 7, 2014 1:30 PM  
**To:** Bernhardt, David L.  
**CC:** Tom Birmingham  
**Subject:** Current Edits  
**Attachments:** Draft Edits for Water Bill.docx

David,  
Attached are current edits produced by Tom. Please review and provides comments to him.  
Damon



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Title: To provide drought relief in the State of California, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) Short Title.—This Act may be cited as the “California Drought Relief Act of 2014”.

(b) Table of Contents.—The table of contents of this Act is as follows:

Sec.1.Short title; table of contents.

Sec.2.Findings.

Sec.3.Definitions.

**TITLE I—ADJUSTING DELTA SMELT MANAGEMENT  
BASED ON INCREASED REAL-TIME MONITORING AND  
UPDATED SCIENCE**

Sec.101.Definitions.

Sec.102.Revise incidental take level calculation to reflect new science.

Sec.103.Factoring increased real-time monitoring and updated science into delta smelt management.

**TITLE II—ENSURING SALMONID MANAGEMENT IS  
RESPONSIVE TO NEW SCIENCE**

Sec.201.Definitions.

Sec.202.Required scientific studies.

Sec.203.Process for ensuring salmonid management is responsive to new science.

Sec.204.Pilot program to protect native anadromous fish in the Stanislaus River.

Sec.205.CALFED invasive species pilot projects in the Sacramento-San Joaquin Bay Delta and its tributaries.

Sec.206.Mark fishery and harvest management.

Sec.207.New actions to benefit Central Valley salmonids.

**TITLE III—OPERATIONAL FLEXIBILITY AND DROUGHT  
RELIEF**

Sec.301.Findings.

Sec.302.Definitions.

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- 1 Sec.303.Operational flexibility in times of drought.
- 2 Sec.304.Operation of cross-channel gates.
- 3 Sec.305.Flexibility for export/inflow ratio.
- 4 Sec.306.Emergency environmental reviews.
- 5 Sec.307.Prioritizing State revolving funds during droughts.
- 6 Sec.308.Increased flexibility for regular project operations.
- 7 Sec.309.Temporary operational flexibility for first few storms of 2015 water year.
- 8 Sec.310.Expediting water transfers.
- 9 Sec.311.Warren Act contracts. [PLACEHOLDER]
- 10 Sec.312.Additional Warren Act contracts. [PLACEHOLDER]

11 **TITLE IV—INCREASING WATER STORAGE**

- 12 Sec.401.Findings.
- 13 Sec.402.Calfed storage feasibility studies.
- 14 Sec.403.Water storage project construction.
- 15 Sec.404.Other storage feasibility studies.
- 16 Sec.405.Dam safety projects with increased storage component.
- 17 Sec.406.Updating water operations manuals for non-Federal projects.
- 18 Sec.407.Central Valley Project.

19 **TITLE V—WATER RIGHTS PROTECTIONS**

- 20 Sec.501.Protections for State water project contractors.
- 21 Sec.502.Area of origin protections.
- 22 Sec.503.No redirected adverse impacts.
- 23 Sec.504.Effect on State laws.

24 **TITLE VI—MISCELLANEOUS**

- 25 Sec.601.Authorized service area.
- 26 Sec.602.Rescheduled water.
- 27 Sec.603.Fisheries disaster declaration. [PLACEHOLDER]
- 28 Sec.604.Oversight board for Restoration Fund.
- 29 Sec.605.Water operations review panel.
- 30 Sec.606.Contingency in event of continuing resolution for fiscal year 2015.

31

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1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) As established in the Proclamation of a State of Emergency issued by the Governor of  
4 the State on January 17, 2014, the State is experiencing record dry conditions;

5 (2) Extremely dry conditions have persisted in the State since 2012, and the drought  
6 conditions are likely to persist into the future;

7 (3) As of September 2014, the National Weather Service’s forecast does not show a high  
8 likelihood of the State experiencing above-normal precipitation for the remainder of the  
9 calendar year;

10 (4) The water supplies of the State are at record-low levels, as indicated by the fact that  
11 all major Central Valley Project reservoir levels were at 20-35 percent of capacity as of  
12 September 25, 2014;

13 (5) The lack of precipitation has been a significant contributing factor to the 6,091 fires  
14 experienced in the State as of September 15, 2014, and which covered nearly 400,000 acres;

15 (6) According to a study released by the University of California, Davis in July 2014, the  
16 drought has led to the fallowing of 428,000 acres of farmland, loss of \$810 million in crop  
17 revenue, loss of \$203 million in dairy and other livestock value, and increased groundwater  
18 pumping costs by \$454 million. The statewide economic costs are estimated to be \$2.2  
19 billion, with over 17,000 seasonal and part-time agricultural jobs lost;

20 (7) CVPIA Level II water deliveries to refuges have also been reduced by 25% in the  
21 north of Delta region, and by 35% in the south of Delta region;

22 (8) Only one-sixth of the usual acres of rice fields are being flooded this fall, which leads  
23 to a significant decline in habitat for migratory birds and an increased risk of disease at the  
24 remaining wetlands due to overcrowding of such birds;

25 (9) The drought of 2013 through 2014 constitutes a serious emergency that poses  
26 immediate and severe risks to human life and safety and to the environment throughout the  
27 State;

28 (10) The serious emergency described in paragraph (4) requires—

29 (A) immediate and credible action that respects the complexity of the water system  
30 of the State and the importance of the water system to the entire State; and

31 (B) policies that do not pit stakeholders against one another, which history shows  
32 only leads to costly litigation that benefits no one and prevents any real solutions;

33 (11) Federal law (including regulations) directly authorizes expedited decisionmaking  
34 procedures and environmental and public review procedures to enable timely and  
35 appropriate implementation of actions to respond to the type and severity of the serious  
36 emergency described in paragraph (4); and

37 (12) The serious emergency described in paragraph (4) fully satisfies the conditions  
38 necessary for the exercise of emergency decisionmaking, analytical, and public review  
39 requirements under—

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(A) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(B) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(C) water control management procedures of the Corps of Engineers described in section 222.5 of title 33, Code of Federal Regulations (including successor regulations); and

(D) the Reclamation States Emergency Drought Relief Act of 1991 (Public Law 102–250; 106 Stat. 53).

(13) The 2008 smelt biological opinion and 2009 salmonid biological opinion contain reasonable and prudent alternatives to protect listed fish species from being jeopardized by operation of the Central Valley Project and State Water Project and to prevent adverse modification of designated critical habitat;

(14) The effect of those reasonable and prudent alternatives in the biological opinions may restrict the amount of water pumping that can occur to deliver water for agricultural, municipal, industrial, groundwater, and refuge uses in California;

(15) Data on the difference between water demand and reliable water supplies for various regions south of the delta, including the San Joaquin Valley, indicate there is a significant annual gap between reliable water supplies to meet agricultural, municipal and industrial, groundwater, and refuges water needs within the South of Delta and Friant Division of the Central Valley Project and the State Water Project south of the Sacramento-San Joaquin River Delta and north of the Tehachapi mountain range and the demands of those areas. This gap varies depending on the methodology of the analysis performed, but can be represented in the following ways:

**Commented [A1]:** Agencies are verifying the accuracy of the facts within this finding.

(A) For Central Valley Project South-of-Delta water service contractors, if it is assumed that a water supply deficit is the difference in the amount of water available for allocation versus the maximum contract quantity, particularly in more recent years, then the water supply deficits that have developed from 1992 to 2014 as a result of changes besides natural variations in hydrology during this timeframe range between 720,000 and 1,100,000 acre-feet.

(B) For Central Valley Project and State Water Project water service contractors south of the Delta and north of the Tehachapi mountain range, if it is assumed that a water supply deficit is the difference between reliable water supplies, including maximum water contract deliveries, safe yield of groundwater, safe yield of local and surface supplies and long-term contracted water transfers, and water demands, including water demands from agriculture, municipal and industrial and refuge contractors, then the water supply deficit ranges between approximately 2,500,000 to 2,700,000 acre-feet.

(C) The California Water Plan evaluated outcomes under current conditions under 198 combinations of climate and growth scenarios, projecting a range of urban and agricultural reliability into the future. Reliability in this instance is defined as the percentage of years in which demand is sufficiently met by supply. Reliability across a range of futures within the San Joaquin Valley can be presented as:

(i) For the San Joaquin River Hydrologic Region, as defined in the California

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Water Plan:

(I) Urban supply reliability ranges between 90 and 100 percent, with a mean reliability across futures in the high 90<sup>th</sup> percentile; and

(II) Agricultural supply reliability ranges between 70 and 100 percent, with a mean reliability across futures in the mid-90<sup>th</sup> percentile.

(ii) For the Tulare Lake Hydrologic Region, as defined in the California Water Plan:

(I) Urban supply reliability ranges between 70 and 100 percent, with a mean reliability across futures in the mid-90<sup>th</sup> percentile; and

(II) Agricultural supply reliability ranges between 20 and 100 percent, with a mean reliability across futures in the low 70<sup>th</sup> percentile.

(16) Since the issuance of the biological opinions, recent studies have raised questions about the benefits to endangered salmonid populations from water pumping restrictions, including:

Commented [A2]: Agencies are assessing this finding.

(A) Expert panel reviews have concluded that instantaneous water velocities in the tidal Delta affect juvenile salmonids, not “tidally average” flows, as previously assumed. Based on instantaneous water velocity modeling, water exports have a much smaller area of effect than was previously believed;

(B) Tagging studies conducted since 1993 (representing more than 28 million fish) demonstrate that the proportion of Sacramento Basin origin Chinook salmon entrained into the pumping facilities (including pre-screen losses) are on average less than 1/10 of 1%; and

(C) Telemetry studies of Sacramento Basin and San Joaquin Basin origin juvenile Chinook salmon have not demonstrated any significant adverse effect from water exports on fish survival.

(17) Data of pumping activities at the Central Valley Project and State Water Project delta pumps identifies that, on average from Water Year 2009 to Water Year 2014, pumping activity takes 893 delta smelt annually with an authorized take level of 5,003 delta smelt annually according to the biological opinion issued December 15, 2008.

(18) It is worth exploring whether there is a way to implement the biological opinions that would preserve the protections afforded listed fish and simultaneously increase water deliveries to the Central Valley Project and State Water Project without weakening environmental laws or protections.

(19) In 2014, better information exists than was known in 2008 concerning conditions and operations that may or may not lead to high salvage events that jeopardize the fish populations, and what alternative management actions can be taken to avoid jeopardy.

(20) Alternative management strategies, such as trapping and barging juvenile salmon through the Delta, removing non-native species, enhancing habitat, and monitoring fish movement and location in real-time can contribute significantly to protecting and recovering these endangered fish species, and at potentially lower costs to water supplies.

(21) Resolution of fundamental policy questions concerning the extent to which

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application of the Endangered Species Act affects the operation of the Central Valley Project and State Water Project is the responsibility of Congress.

### SEC. 3. DEFINITIONS.

In this Act:

(1) DELTA.—The term “Delta” means the Sacramento-San Joaquin Delta and the Suisun Marsh, as defined in sections 12220 and 29101 of the California Public Resources Code.

(2) Export Pumping Rates.—The term “export pumping rates” means the rates of pumping at the W.C. “Bill” Jones Pumping Plant and the Harvey O. Banks Pumping Plant, in the southern Delta.

~~(3) JEOPARDY.—The term “jeopardy” means to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.~~

~~(34)~~ LISTED FISH SPECIES.—The term “listed fish species” means listed salmonid species and the Delta smelt.

~~(45)~~ LISTED SALMONID SPECIES.—The term “listed salmonid species” means natural origin steelhead, natural origin genetic spring run Chinook, and genetic winter run Chinook salmon.

~~(5) NEGATIVE IMPACT ON THE LONG-TERM SURVIVAL.—The term “negative impact on the long-term survival” means to reduce appreciably the likelihood of the survival of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.~~

(6) OMR.—The term “OMR” means the Old and Middle River in the Delta.

(7) OMR FLOW OF -5000 CFS.—The term “OMR flow of -5000 cfs” means Old and Middle River flow of negative 5,000 cubic feet per second as measured by—

(A) the smelt biological opinion; and

(B) the salmonid biological opinion.

(8) SALMONID BIOLOGICAL OPINION.—The term “salmonid biological opinion” means the biological opinion issued by the National Marine Fisheries Service on June 4, 2009.

(9) SMELT BIOLOGICAL OPINION.—The term “smelt biological opinion” means the biological opinion on the Long-Term Operational Criteria and Plan for coordination of the Central Valley Project and State Water Project issued by the United States Fish and Wildlife Service on December 15, 2008.

(10) STATE.—The term “State” means the State of California.

### TITLE I—ADJUSTING DELTA SMELT MANAGEMENT BASED ON INCREASED REAL-TIME MONITORING AND UPDATED SCIENCE

SEC. 101. DEFINITIONS.

In this title:

(1) DIRECTOR.—The term “Director” means the Director of the United States Fish and Wildlife Service.

(2) DELTA SMELT.—The term “~~4D~~delta smelt” means the fish species with the scientific name *Hypomesus transpacificus*.

(3) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

SEC. 102. REVISE INCIDENTAL TAKE LEVEL  
CALCULATION FOR DELTA SMELT TO REFLECT NEW  
SCIENCE.

No later than October 1, 2015, the Director of Fish and Wildlife Service, in cooperation with other federal, state, and local agencies, shall use the best scientific and commercial data available to complete a review and, if warranted, a modification of the incidental take level in the 2008 delta smelt biological opinion that takes into account, among other considerations,—

- (a) salvage information available over at least 18 years;
- (b) updated or more recently developed statistical models;
- (c) updated scientific and commercial data; and
- (d) the most recent information regarding the environmental factors driving delta smelt salvage.

SEC. 103. FACTORING INCREASED REAL-TIME  
MONITORING AND UPDATED SCIENCE INTO DELTA  
SMELT MANAGEMENT.

(a) In General.—The reasonable and prudent alternative described in the 2008 delta smelt biological opinion, as amended, and any successor opinions, shall be implemented consistent with current best scientific and commercial data available, and implementation shall be adjusted accordingly as new scientific and commercial data are developed.

(b) Increased Monitoring to Inform Real-time Operations.— ~~Contingent upon funding,~~ ~~‡~~The Secretary shall conduct additional surveys, on an annual basis at the appropriate time of the year based on environmental conditions, in collaboration with other delta science interests.

(1) In implementing this section, after seeking public input, the Secretary shall —

(A) use the most appropriate survey methods for the detection of delta smelt

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1 to determine the extent that adult delta smelt are distributed in relation to certain  
2 levels of turbidity, or other environmental factors that may influence salvage  
3 rate; and

4 (B) use results from appropriate survey methods for the detection of delta  
5 smelt to determine how the Central Valley Project and State Water Project may  
6 be operated more efficiently to minimize salvage while maximizing export  
7 pumping rates of water export without causing a negative impact on the long-  
8 term survival of the Delta smelt.

9 (2) During the period beginning on December 1, 2014 and ending March 31, 2015,  
10 and in each successive December through March period, if suspended sediment loads  
11 enter the Delta from the Sacramento River and the suspended sediment loads appear  
12 likely to raise turbidity levels in Old River north of the export pumps from values  
13 below 12 Nephelometric Turbidity Units (NTU) to values above 12 NTU, the  
14 Secretary shall—

15 (A) conduct daily monitoring using appropriate survey methods at locations  
16 including, but not limited to, the vicinity of Station 902 to determine the extent  
17 that adult Delta smelt are moving with turbidity toward the export pumps; and

18 (B) use results from the monitoring surveys at locations including, but not  
19 limited to, the vicinity of Station 902 to determine how increased trawling can  
20 inform daily real-time Central Valley Project and State Water Project operations  
21 to minimize salvage while maximizing export pumping rates of water export  
22 without causing a negative impact on the long-term survival of the Delta smelt.

23 (c) Periodic Review of Monitoring.—At least once every 5 years, or sooner if the  
24 Secretary determines it is appropriate, the Secretary shall—

25 (1) evaluate whether the monitoring program under subsection (b), combined with  
26 other monitoring programs for the Delta, is providing sufficient data to inform  
27 Central Valley Project and State Water Project operations to minimize salvage while  
28 maximizing export pumping rates of water export without causing a negative impact  
29 on the long-term survival of the Delta smelt; and

30 (2) determine whether the monitoring efforts should be changed in the short- or  
31 long-term to provide more useful data.

32 (d) Delta Smelt Distribution Study.—

33 (1) IN GENERAL.—No later than January 1, 2016, contingent upon funding, the  
34 Secretary, in collaboration with Delta science partners, shall implement new targeted  
35 sampling and monitoring specifically designed to understand delta smelt abundance,  
36 distribution, and the types of habitat occupied by delta smelt during all life stages.

37 (2) SAMPLING.—The Delta smelt distribution study shall, at a minimum—

38 (A) include recording water quality and tidal data;



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(B) be designed to understand delta smelt abundance, distribution, habitat use, and movements throughout the Bay-Delta during all seasons;

(C) consider areas not routinely sampled by existing monitoring programs, including wetland channels, near-shore water, depths below 35 feet, and shallow-water; and

(D) use the most biologically appropriate survey methods, including sampling gear suited to the type of sampling or monitoring.

(e) Scientifically supported implementation of Old and Middle River flow requirements.—In implementing the provisions of the smelt biological opinion, or any successor biological opinion, ~~on~~ pertaining to management of reverse flow in the Old and Middle Rivers, the Secretary shall—

(1) consider the relevant provisions of the biological opinion or any successor biological opinion;

(2) manage reverse flow in Old and Middle Rivers as prescribed by the smelt biological opinion, or any successor biological opinion, to minimize water supply reductions for the Central Valley Project and the State Water Project;

(3) document in writing any significant facts about real-time conditions relevant to the determinations of reverse OMR flow rates less negative than -5000 cubic feet per second, including—

(A) whether targeted real-time fish monitoring in Old River pursuant to this section, including monitoring in the vicinity of Station 902, indicates that a significant increase in the salvage of delta smelt is imminent; and

(B) whether near-term forecasts with available salvage models show under prevailing conditions that OMR flow of -5000 cubic feet per second will cause significantly increased take of delta smelt; and

(4) show in writing that any determination to manage OMR reverse flow at rates less negative than -5000 cubic feet per second is necessary to avoid a negative impact on the long-term survival of the Delta smelt, including an explanation of the data examined and the connection between those data and the choice made, after considering:

(A) the findings in paragraph (3);

(B) whether continued project operations over the remainder of the water year would exceed the incidental take level;

(C) the potential effects of entrainment on subsequent smelt abundance, including consideration of the distribution of the population throughout the Delta,

(D) the water temperature,

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(E) other factors relevant to the determination; and

(F) whether any alternative measures could have a lesser water supply impact.

(5) for any subsequent biological opinion, make the showing required in paragraph (4) for any determination to manage OMR reverse flow at rates less negative than the upper limit in the biological opinion if the upper limit in the biological opinion is more negative than -5000 cubic feet per second.

(f) Memorandum of Understanding. No later than December 1, 2014, the Commissioner and the Director will execute a Memorandum of Understanding (MOU) to ensure that the smelt biological opinion is implemented in a manner that minimizes water supply losses while complying with applicable laws and regulations. If that MOU alters any procedures set out in the biological opinion, there will be no need to reinitiate consultation if those changes do not have an adverse effect on listed species and the implementation of the MOU would not be a major change to implementation of the biological opinion. Any change to procedures that does not create a new adverse effect to listed species will not alter application of the take exemption in the incidental take statement in the biological opinion under the Endangered Species Act, section 7(o)(2).

## **TITLE II—ENSURING SALMONID MANAGEMENT IS RESPONSIVE TO NEW SCIENCE**

### **SEC. 201. DEFINITIONS.**

In this title:

(1) ASSISTANT ADMINISTRATOR.—The term “Assistant Administrator” means the Assistant Administrator of NOAA Fisheries.

(2) SECRETARY.—The term “Secretary” means the Secretary of Commerce.

### **SEC. 202. REQUIRED SCIENTIFIC STUDIES.**

(a) Trap and Barge Pilot Project to Increase Survivals Through the Delta.—The Assistant Administrator and the Commissioner shall, in collaboration with the U.S. Fish and Wildlife Service, the California Department of Fish and Wildlife and other interested parties, design, permit, implement and evaluate a pilot program to test the efficacy of an experimental trap and barge program to improve survival of juvenile salmonids emigrating from the San Joaquin watershed through the Delta, as further described below.

(1) Within 30 days of enactment, the Assistant Administrator shall convene a working group of the relevant agencies and other interested parties through which to develop and execute a plan for the design, budgeting, implementation and evaluation of such a pilot program, utilizing existing expertise on such trap and barge programs as may be available. Such plan shall detail a schedule and budget for the program, and identify the responsible parties for each element of the program.

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(2) The Assistant Administrator shall provide an opportunity for public review and comment on the pilot program and also simultaneously seek an expeditious independent peer review of the program to improve its rigor and likelihood of success.

(3) Upon completion of (2), above, the Assistant Administrator shall complete the necessary design and evaluations of the pilot program and seek such [authorizations and permits](#) or [other regulatory authorizations](#) as may be required [under federal law](#) for its prompt implementation and evaluation by the Assistant Administrator, the Commissioner or such other parties as they determine most suitable.

(4) ~~Subject to the availability of funding,~~ The Assistant Administrator and the Commissioner shall seek to commence implementation of the pilot program in 2015 or as soon thereafter as is possible, and shall conduct such pilot for such period of time as needed to evaluate the efficacy of the program to improve survival across a range of environmental conditions.

(5) The Assistant Administrator and the Commissioner shall jointly report annually to the Senate Environment and Public Works Committee and the House Committee on Natural Resources their progress in implementing this section, estimated survival rates through the Delta for both juvenile salmonids that were barged through the Delta and those that were not barged, and if survival rates are significantly higher for barged fish as compared to other outmigrating smolts, the Assistant Administrator's and Commissioner's recommendations regarding broadening the pilot program and any relevant recommendations pursuant to section 203.

(b) Tagging studies.

(1) IN GENERAL.—The Assistant Administrator, in collaboration with other delta science partners, shall implement tagging studies, including acoustic telemetry and PIT tagging studies as appropriate, wherein habitat, predators, flow conditions, or other factors are experimentally altered and the behavior and survival of tagged juvenile salmonids are observed. Studies may also be conducted to aid in the understanding of Chinook salmon and steelhead abundance, distribution, and survival.

(2) SAMPLING.—The sampling—

(A) shall include recording water quality and tidal data;

(B) will be designed to aid in the understanding of salmonid abundance, distribution, and movements throughout the Bay Delta, including estimates of through Delta survival from Knights Landing or from Mossdale to Chipps Island; and

(C) will supplement, not supplant, ongoing acoustic tag and coded wire survival studies in the San Joaquin and Sacramento Rivers which the Assistant Administrator determines are crucial for trend monitoring.

**SEC. 203. PROCESS FOR ENSURING SALMONID  
MANAGEMENT IS RESPONSIVE TO NEW SCIENCE.**

(a) General directive. The reasonable and prudent alternative described in the salmonid

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biological opinion allows for and anticipates adjustments in operating criteria to reflect the best scientific and commercial data currently available, and authorizes efforts to test and evaluate improvements in operations that will meet applicable regulatory requirements and enable improvements in water supply reliability. The Commissioner and the Assistant Administrator are hereby directed to utilize these authorities fully as described below.

(b) Annual reviews of certain operating criteria. No later than December 31, 2015, and at least annually thereafter,

(1) The Commissioner, in consultation with and with the assistance of the Assistant Administrator shall ~~commence annual efforts to~~ examine and identify adjustments to the initiation of Action IV.2.3 pertaining to negative OMR flows, subject to paragraph (5).

(2) The Commissioner, in consultation with and with the assistance of the Assistant Administrator, shall examine and identify adjustments in the timing, triggers or other operational details relating to the implementation of pumping restrictions in Action IV.2.1 pertaining to the inflow to export requirements, subject to paragraph (5).

(3) Pursuant to the consultation and assessments carried out under paragraphs (1) and (2) of this subsection, the Commissioner shall make recommendations to the Assistant Administrator on adjustments that, in the exercise of the adaptive management provisions of the salmonid biological opinion, ~~can improve water supplies will reduce water supply impacts of the salmonid biological opinion on the Central Valley Project and the California State Water Project~~ and are consistent with the requirements of applicable law and as further described in subsection (c).

(4) The Commissioner shall implement those adjustments for which the conditions under subsection (c) are met.

(5) The Assistant Administrator and the Commissioner shall review and identify adjustments to water supply restrictions in any successor biological opinion to the salmonid biological opinion, applying the provisions of this section to those water supply restrictions where there are references to Actions IV.2.1 and IV.2.3.

(c) Adjustments that shall be implemented. In ~~receiving~~ reviewing the recommendations under subsection (b), the Assistant Administrator shall evaluate the effects of the recommended adjustments on listed species and shall ~~authorize recommend to the Commissioner~~ adjustments for which:

(1) the net effect on listed species is equivalent to those of the underlying criteria in the salmonid biological opinion, taking into account whatever actions or measures may be implemented in conjunction with the adjustments to mitigate its effects; and

(2) the effects of the adjustment fall within the incidental take authorizations.

(d) ~~Taking into account offsetting species survival benefits from other measures.~~

When examining and identifying opportunities to offset the potential adverse effect of adjustments to operating criteria, the Commissioner and the Assistant Administrator shall take into account the potential species survival improvements that are likely to result from other measures which, if implemented in conjunction with the adjustments, would offset adverse effects, if any, of the adjustments. When evaluating offsetting measures, the Commissioner and the Assistant Administrator shall consider the

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type, timing and nature of the adverse effects, if any, to specific species and ensure that the measures provide equivalent overall benefits to the listed species in the aggregate, as long as the change will not cause a negative impact on the long-term survival of a listed salmonid species, ~~in survival rates for each species remains consistent with the Endangered Species Act and implementing regulations.~~

~~(1) The offsetting measures could include actions implemented with the support of a substantial contribution from water districts that would benefit from the adjustments.~~

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- (e) Framework for examining opportunities to minimize or offset the potential adverse effect of adjustments to operating criteria.—Not later than December 31, 2015, and every five years thereafter, the Assistant Administrator shall, in collaboration with the Director of the California Department of Fish and Wildlife, based on the best scientific and commercial data available and for each listed salmonid species, issue estimates of the increase in through-Delta survival the Secretary expects to be achieved—

(1) ~~through with~~ restrictions on export ~~pumping rates~~ restrictions as specified by Action IV.2.3 as compared to limiting OMR flow to a fixed rate of -5000 cubic feet per second within the time period Action IV.2.3 is applicable, based on a given rate of San Joaquin River inflow to the Delta and holding other relevant factors constant;

(2) ~~through with~~ San Joaquin River inflow to export restrictions on export pumping rates specified within Action IV.2.1 as compared to the ~~export~~ restrictions in the April/May period imposed by the State Water Resources Control Board decision D-1641, based on a given rate of San Joaquin River inflow to the Delta and holding other relevant factors constant;

(3) ~~through by~~ a trap and barge program based on the experience of other systems to the extent they are comparable, and the study described in section 202, as that information becomes available;

(4) through physical habitat restoration improvements;

(5) through predation control programs;

(6) through the instillation of temporary barriers, the management of Cross Channel Gates operations, and other projects affecting flow in the Delta;

(7) ~~through by~~ salvaging fish that may be entrained near the entrance to Clifton Court Forebay; and

(8) ~~through by~~ any other management measures that may provide equivalent or better protections benefits for listed species ~~with improvements to water supplies while maximizing export pumping rates without causing a negative impact on the long-term survival of a listed salmonid species.~~

- (f) Survival estimates ~~to be quantitative to the maximum extent feasible.~~

(1) ~~To the maximum extent feasible, the~~ Assistant Administrator shall make ~~these quantitative estimates of survival, and determinations quantitatively to the maximum extent feasible,~~ such as a range of percentage increases in through-Delta survival that could result from the management measures, and if the scientific information is lacking for quantitative estimates, shall do so on qualitative terms based upon the best available science.

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(2) If the Assistant Administrator provides qualitative survival estimates ~~of the benefits to the~~ for a species resulting from one or more management measures, the Secretary shall, to the maximum extent feasible, rank the management measures described in subsection (e) in terms of their most likely expected contribution to increased through-Delta survival relative to the other measures.

(3) If at the time the Assistant Administrator conducts the analysis under subsection (b), the Secretary has not issued ~~an the estimates~~ of increased through-Delta survival ~~benefits~~ from different management measures pursuant to subsection (e), the Secretary shall compare the protections ~~benefits~~ to the species from different management measures based on the best scientific and commercial data available at the time.

(g) Comparison of adverse consequences for alternative management measures of equal protection for a species ~~benefit to the salmon~~.

(1) For the purposes of this subsection—

(A) The alternative management measure or combination of alternative management measures identified in paragraph (2) shall be known as the “equivalent alternative measure.”

(B) The existing measure or measures identified in subparagraphs (2)(A),(B),(C), or (D) shall be known as the “equivalent existing measure.”

(C) An “equivalent increase in through-Delta survival rates for listed salmonid species” shall mean an increase in through-Delta survival rates that is equivalent when considering the change in through-Delta survival rates for the listed salmonid species in the aggregate, and not ~~necessarily~~ the same change for each individual species, as long as the change in survival rates will not cause a negative impact on the long-term survival of a listed salmonid species. for each species remains consistent with the Endangered Species Act and implementing regulations.

(2) As part of the reviews of operating criteria pursuant to subsection (b), the Assistant Administrator shall determine whether any alternative management measures or combination of alternative management measures listed in subsection (e)(3) through (8) would provide an increase in through-Delta survival rates for listed salmonid species that is equivalent to the increase in through-Delta survival rates for listed salmonid species from the following:

(A) through restrictions on export pumping rates ~~with export restrictions~~ as specified by Action IV.2.3, as compared to limiting OMR flow to a fixed rate of -5000 cubic feet per second within the time period Action IV.2.3 is applicable;

(B) through restrictions on export pumping rates ~~with export restrictions~~ as specified by Action IV.2.3, as compared to a modification of Action IV.2.3 that would provide additional water supplies, other than that described in subparagraph (A);

(C) through ~~with~~ San Joaquin River inflow to export restrictions on export pumping rates specified within Action IV.2.1, as compared to the ~~export~~ restrictions in the April/May period imposed by the State Water Resources Control Board decision D-1641, or

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(D) ~~through with~~ San Joaquin River inflow to export restrictions on export pumping rates specified within Action IV.2.1, as compared to a modification of Action IV.2.1 that would reduce water supply impacts of the salmonid biological opinion on the Central Valley Project and the California State Water Project, provide additional water supplies, other than that described in subparagraph (C).

(3) If the Assistant Administrator identifies an equivalent alternative measure pursuant to paragraph (2), the Assistant Administrator shall determine whether

(A) it is technically feasible and within federal jurisdiction to implement the equivalent alternative measure, and

(B) the adverse consequences of doing so are less than the adverse consequences of the equivalent existing measure, including a concise evaluation of the adverse consequences to other affected interests.

(4) If the Assistant Administrator makes the findings in subparagraph (3)(A) and (B), the Assistant Administrator and the Commissioner shall adjust the operating criteria in the salmonid biological opinion pursuant to this subsection to implement the equivalent alternative measure in place of the equivalent existing measure in order to increase export rates of pumping water supplies to the greatest extent possible while maintaining a net combined effect of equivalent through-Delta survival rates for the listed salmonid species.

(h) Tracking adverse effects beyond the range of effects accounted for in the salmonid biological opinion and coordinated operation with smelt biological opinion.

(1) Among the adjustments to the operational criteria considered through the adaptive management process under this section, the Assistant Administrator and the Commissioner shall

(A) Evaluate the effects on listed salmonid species and water supply of the potential adjustment to operational criteria described in subparagraph (B); and

(B) Consider requiring that before some or all of the provisions of Actions IV.2.1. or IV.2.3 are imposed in any specific instance, the Assistant Administrator show that the implementation of these provisions in that specific instance is necessary to avoid a negative impact on the long-term survival of a listed salmonid species, additional adverse effects upon listed salmonid species beyond the range of effects analyzed and accounted for in the salmonid biological opinion

(2) The Assistant Administrator, the Director and the Commissioner, in coordination with State officials as appropriate, shall establish operational criteria to coordinate management of OMR flows under the smelt and salmonid biological opinions, in order to take advantage of opportunities to provide additional water supplies from the coordinated implementation of the biological opinions.

(i) Real-Time Monitoring and Management. The Assistant Administrator and the Commissioner shall, through the NMFS adaptive management salmonid biological opinion provisions, analyze whether date-certain triggers that limit OMR reverse flow to -5000 cubic feet per second could be adjusted to instead use real-time migration information on salmonids. If the analysis shows that the use of real-time information to trigger OMR flow limitations would



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improve water supply without causing significant adverse effects to Winter-run Chinook salmon, then such real-time management triggers shall be implemented.

**SEC. 204. PILOT PROGRAM TO PROTECT NATIVE ANADROMOUS FISH IN THE STANISLAUS RIVER.**

(a) Establishment of Non-native Predator Fish Removal Program. The Assistant Administrator, in consultation with the United States Fish and Wildlife Service and the California Department of Fish and Wildlife, shall develop and conduct a pilot non-native predator fish removal program to remove non-native striped bass, smallmouth bass, largemouth bass, black bass, and other non-native predator fishes in and around the Bay Delta, including the Stanislaus River, contingent upon funding. The pilot program shall--

(1) be scientifically based;

(2) include methods to quantify the number and size of predator fishes removed each year, the impact of such removal on the overall abundance of predator fishes, and the impact of such removal on the populations of juvenile anadromous fish found in the Stanislaus River and elsewhere by, among other things, evaluating the number of juvenile anadromous fish that migrate past the rotary screw trap located at Caswell;

(3) among other methods, use wire fyke trapping, portable resistance board weirs, and boat electrofishing, which are among the most effective predator collection techniques that minimize effects to native anadromous fish;

(4) be developed, including the application for all necessary scientific research and species enhancement permits under section 10(a)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)), for the performance of the pilot program, not later than 6 months after the date of the enactment of this Act;

(5) be implemented on the first business day of the calendar year following the issuance of all necessary scientific research, species enhancement permits, and funding needed to begin the pilot program; and

(6) be implemented for a period of seven consecutive calendar years.

(b) Management. The Assistant Administrator is authorized and encouraged to enter into agreements with interested local water districts to jointly develop, implement and evaluate this pilot program. Such parties shall work collaboratively to ensure the performance of the pilot program, and shall discuss and agree upon, among other things, changes in the structure, management, personnel, techniques, strategy, data collection, reporting and conduct of the pilot program.

(c) Conduct.—

(1) IN GENERAL.—By agreement between the Assistant Administrator and the participating districts, the pilot program may be conducted by their own personnel, qualified private contractors hired by the districts, personnel of, on loan to, or otherwise assigned to NOAA Fisheries, or a combination thereof.

(2) PARTICIPATION BY NOAA FISHERIES.—In the event the districts elect to conduct the program using their own personnel or qualified private contractors hired by them, the



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Commissioner has the option to assign an employee of, on loan to, or otherwise assigned to NOAA Fisheries, to be present for all activities performed in the field. Such presence shall ensure compliance with the agreed upon elements specified in subsection (b). The districts shall pay 100 percent of the cost of such participation as specified in subsection (d).

(3) TIMING OF ELECTION.—The districts shall notify the Assistant Administrator of their election on or before October 15 of each calendar year of the pilot program, which election shall apply to the work performed in the subsequent calendar year.

(d) Funding.—

(1) ANNUAL FUNDING.—The Commissioner, the Assistant Administrator, and the participating districts shall develop a budget and funding plan for the pilot project that will allocate costs appropriately amongst the participating entities. On or before December 1 of each year of the pilot program, the Commissioner shall submit to the districts an estimate of the cost to be incurred by the Bureau of Reclamation in the following calendar year, if any, including the cost of any data collection and posting under subsection (e). If an amount equal to the estimate is not provided to the Assistant Administrator by the districts on or before December 31 of each year, (a) NOAA Fisheries shall have no obligation to conduct the pilot program activities otherwise scheduled, and (b) the districts shall be prohibited from conducting any aspect of the pilot program, until full payment is made by the districts.

(2) ACCOUNTING.—On or before September 1 of each calendar year, the Assistant Administrator shall provide an accounting of the prior calendar year's expenses to the participating entities. If the estimate paid by the districts was less than the actual costs incurred by NOAA Fisheries, the districts shall have until September 30 of that calendar year to pay the difference to the fund identified by the Assistant Administrator in subsection (d)(1), or NOAA Fisheries shall have no obligation to conduct the pilot program activities otherwise scheduled. If the estimate paid by the districts was greater than the actual costs incurred by NOAA Fisheries, then a credit shall be provided to the districts, which shall be deducted from the estimate payment the districts must make for the work performed by NOAA Fisheries, if any, in the next calendar year.

(e) Reporting and Evaluation.—

(1) IN GENERAL.—On or before the 15th day of each month, the Assistant Administrator shall post on the website of NOAA Fisheries a tabular summary of the raw data collected in the prior month.

(2) REPORT.—On or before June 30 of the calendar year following the completion of the program, the Assistant Administrator and districts shall jointly submit a report for peer review that—

(A) discusses the findings and conclusions of the pilot program;

(B) synthesizes the data collected under paragraph (1); and

(C) makes recommendations for further study and action.

(f) Permits Process.—

(1) Not later than one year after filing of an application by the Assistant Administrator and the districts, the Secretary of the Interior, the Secretary of Commerce, or both, as

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appropriate, shall issue all necessary scientific research and species enhancement permits under section 10(a)(1) of the Endangered Species Act (16 U.S.C. 153(9)(a)(1)), for the performance of the pilot program.

(2) All permits issued shall be in the name of NOAA Fisheries and the participating districts.

(3) Districts may delegate the authority to administer the permit authority to any qualified private contractor retained in accordance with subsection (c).

(g) Emergency Environmental Reviews.—To expedite this environmentally beneficial program for the conservation of threatened and endangered species, the Secretary of the Interior shall consult with the Council on Environmental Quality in accordance with Section 1506.11 of title 40, Code of Federal Regulations (including successor regulations) to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 for this section.

(h) Definitions.—For the purposes of this section:

(1) COMMISSIONER.—The term ‘Commissioner’ means the Commissioner of the Bureau of Reclamation.

(2) DISTRICTS.—The term ‘districts’ means the Oakdale Irrigation District and the South San Joaquin Irrigation District.

(3) PILOT PROGRAM.—The term ‘program’ means the pilot non-native predator removal program established under this section.

(i) Sunset.—The authorities provided under this section shall expire seven years after the implementation of the pilot program.

**SEC. 205. CALFED INVASIVE SPECIES PILOT PROJECTS  
IN THE SACRAMENTO-SAN JOAQUIN BAY DELTA AND  
ITS TRIBUTARIES.**

(a) FINDINGS.—Congress finds that—

(1) The Sacramento-San Joaquin Bay Delta and its Tributaries-

(A) is one of the largest and most diverse estuaries in the United States,

(B) is a natural treasure and a vital link in California’s water system, and

(C) has native biodiversity important to the ecological and economic systems of California, including water deliveries to agriculture, municipalities and to the environment and fisheries industries, and

(D) has river tributaries important for rearing of salmon and steelhead smolts which experience a high level of predation from non-native species.

(2) Past, present and future introductions of invasive species are and will be a major factor in the decline of native pelagic and anadromous endangered or threatened species in the Sacramento–San Joaquin Bay Delta and its tributaries.

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(3) More than 250 nonnative aquatic and plant species have been introduced into the Delta and its tributaries; of these, at least 185 species have become established and have altered the Sacramento-San Joaquin Bay Delta watershed's ecosystem.

(4) The Bay Delta Conservation Plan, the Recovery Plan for the Evolutionarily Significant Units of Sacramento River Winter-run Chinook Salmon and Central Valley Spring-run Chinook Salmon and the Distinct Population Segment of the Central Valley Steelhead, the Recovery Plan for the Sacramento-San Joaquin Delta Native Fishes, and the multiple 5 year reviews of those plans all highlight that introduced nonnative invasive species are a significant factor in the decline of native fish species. These nonnative species, which include invasive aquatic vegetation, predators, and competitors, directly or indirectly cause biological stress for pelagic and anadromous endangered or threatened fish species in the Sacramento-San Joaquin Bay-Delta and its tributaries.

(5) If threats by nonnative species to native fish species are not addressed, there is a probability that native species of the Sacramento-San Joaquin Bay-Delta watershed's pelagic and anadromous community will go extinct.

(6) The CALFED legislation (Public Law 108-361) authorized a program to prevent, control, and eradicate invasive species, but it has not been implemented to date.

(7) A focused pilot program needs to be conducted within the Delta and river tributaries to reduce threats to native listed species by nonnative species. Reducing nonnative stressors on native listed species will contribute to both native listed species recovery and lowering the impact on downstream water users as those native listed species recover.

(b) PILOT PROJECTS TO IMPLEMENT CALFED INVASIVE SPECIES PROGRAM.

(1) Not later than January 1, 2016, the Secretary of the Interior, in collaboration with the Secretary of Commerce and the Director of the California Department of Fish and Wildlife, shall begin pilot projects to implement the invasive species program, including prevention, control and eradication authorized pursuant to Section 103(d)(6)(A)(iv) of Public Law 108-361. The pilot projects shall:

(A) seek to reduce invasive aquatic vegetation, predators, and other competitors which are major factors in the decline of native listed pelagic and anadromous species that occupy the Sacramento and San Joaquin Rivers and their tributaries and the Sacramento-San Joaquin Bay-Delta; and

(B) address how to remove, reduce, or control the effects of species including: Asiatic clams, silversides, gobies, Brazilian water weed, largemouth bass, smallmouth bass, striped bass, crappie, bluegill, white and channel catfish, and brown bullheads.

(2) The Secretary of the Interior's efforts shall consist of the following phases:

(A) Phase 1. The Secretary of the Interior shall convene a panel of experts, including experts recommended by the State of California, to:

(i) Identify the non-native species having the greatest impact on the viability of native pelagic and anadromous native listed species; and

(ii) Identify the non-native species for which actions to reduce or control the population is determined to be possible; and

**Commented [A3]:** Awaiting feedback from the agencies on whether the experts in an existing predation workshop would address the items outlined in clauses (i) through (iii) of subparagraph (A) in the proposed text.

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(iii) Design a study to reduce the non-native species identified in clauses (i) and (ii) and prepare a cost estimate to implement this study.

(B) Phase 2. The Secretary of the Interior shall test the general viability of nonnative reduction methods, including either direct predator removal or alteration of channel conditions, or some combination thereof, through pilot projects at multiple sites in addition to the projects on the Stanislaus River pursuant to Section 204, including known hotspots of predator aggregation or activity, such as:

(i) Clifton Court Forebay,

(ii) Central Valley Project intakes,

(iii) Head of Old River,

(iv) Georgiana Slough,

(v) Old and Middle Rivers,

(vi) Franks Tract,

(vii) Paintersville Bridge,

(viii) individual river tributaries important for wild populations of anadromous species listed as threatened or endangered under the Endangered Species Act of 1973,

(ix) Human-made submerged structures, and

(x) Salvage release sites.

(C) Phase 3. If it is feasible to do so, the Secretary of the Interior shall implement nonnative reduction methods at a larger number of sites, incorporating information learned during the first and second phase.

(3) The Secretary of the Interior shall collect data associated with the implementation of the projects above, and shall specifically collect data on the impact on

(A) pelagic and anadromous species listed as threatened or endangered under the Endangered Species Act of 1973,

(B) water quality, and

(C) water supply.

(4) After assessing the data described in subparagraph (2), the Secretary of the Interior, in collaboration with the Secretary of Commerce and the Director of the California Department of Fish and Wildlife, shall, if appropriate, annually recommend revisions to the reasonable and prudent alternatives contained in the salmonid biological opinion and the smelt biological opinion, or other administrative federal requirements governing the operation of the Central Valley Project and the State Water Project, that are likely to produce additional fishery, water quality, and water supply benefits.

(c) IMPLEMENTATION. The Secretary of the Interior shall implement the CALFED program described in subpart (b) for at least a period of seven consecutive years beginning on the date of implementation.

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(d) REPORTING REQUIREMENTS. The Secretary of the Interior shall provide reports to the Senate Committee on Environment and Public Works and the House Committee on Natural Resources on the following:

(1) No later than January 1, 2016, a description of the projects described in subpart (b), including the application for all necessary scientific research and species enhancement permits under section 10(a) (1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)), and for the performance of the CALFED invasive species Program.

(2) Upon the completion of Phase 1 as described in subsection (b)(1)(A), a report describing its implementation and cost effectiveness.

(3) Two years after the project begins, a report describing the progress of the eradication of the nonnative species in the Sacramento-San Joaquin Bay-Delta and its tributaries and how such efforts have helped the Recovery Plans for endangered and threatened Anadromous and Pelagic Species in the Sacramento-San Joaquin Bay-Delta watershed and the associated cost effectiveness of each control measure.

(4) After the pilot projects are complete, a report describing the results of the program, including recommendations on whether the program should be continued, how the program may be taken to full scale in the most cost effective manner, and how a mitigation program for the Central Valley Project allowable under section 10(a)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)) could be implemented.

(e) EMERGENCY ENVIRONMENTAL REVIEWS. To expedite this environmentally beneficial program for the conservation of threatened and endangered species, the Secretary of the Interior shall consult with the Council on Environmental Quality in accordance with section 1506.11 of title 40, Code of Federal Regulations (including successor regulations) to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 for this program.

## SEC. 206. MARK FISHERY AND HARVEST MANAGEMENT.

To minimize the impact of harvest and project operations on salmonids, contribute to recovery of stocks of endangered or threatened species, improve management of fish stocks of both hatchery and natural origins, and to minimize risk of a natural origin fall Chinook listing under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), the Assistant Administrator shall

(1) in partnership with the Director of the California Department of Fish and Wildlife and persons responsible for funding Central Valley hatcheries, convene an independent science panel within 60 days of enactment of this Act to follow up on the 2012 California Hatchery Scientific Review Group's recommendations by providing an assessment of costs and benefits associated with marking, with tagging, and with a program that combines in some way marking and tagging Central Valley hatchery produced fall Chinook. The Assistant Administrator shall ensure that the independent science panel—

(A) Includes an appropriate number of scientific experts as determined and appointed by the Assistant Administrator, and an equal number of scientific experts selected by entities responsible for funding California salmon mitigation hatcheries;

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(B) Considers and gives equal weight to both inland and ocean monitoring and management needs, including harvest.

(C) Completes the review by December 31, 2015.

(2) assess and implement harvest management strategies by October 1, 2018 to provide better protection for sensitive Chinook stocks while still allowing for harvest of hatchery fall Chinook.

**SEC. 207. NEW ACTIONS TO BENEFIT CENTRAL VALLEY SALMONIDS.**

Not later than March 1, 2016, under similar terms and conditions as successful United States Fish and Wildlife Service programs on Clear Creek and Battle Creek, the Director, in collaboration with the Director of the California Department of Fish and Wildlife, the Commissioner of the Bureau of Reclamation, or both, shall issue necessary permits and otherwise facilitate the deployment of temporary in-river structures—

(1) to protect and grow natural origin spring Chinook populations by blocking access to hatchery origin fall Chinook; and

(2) to prevent hatchery origin Chinook salmon and steelhead from reaching spawning grounds where the species will compete for spawning with natural origin fish listed under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

**TITLE III—OPERATIONAL FLEXIBILITY AND DROUGHT RELIEF**

**SEC. 301. FINDINGS.**

Congress finds that—

(1) Based on the congressional findings in Sec. 2 of this Act, it is appropriate and necessary for federal agencies to exercise the maximum amount of flexibility provided to them under the applicable laws and regulations to maximize delivery of water supplies while providing the same or better levels of protection for species.

**SEC. 302. DEFINITIONS.**

In this title:

(1) **CENTRAL VALLEY PROJECT.**—The term “Central Valley Project” has the meaning given the term in section 3403 of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4707).

(2) **KLAMATH PROJECT.**—The term “Klamath Project” means the Bureau of Reclamation

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project in the States of California and Oregon, as authorized under the Act of June 17, 1902 (32 Stat. 388, chapter 1093).

(3) RECLAMATION PROJECT.—The term “Reclamation Project” means a project constructed pursuant to the authorities of the reclamation laws and whose facilities are wholly or partially located in the State.

(4) SECRETARIES.—The term “Secretaries” means—

(A) the Administrator of the Environmental Protection Agency;

(B) the Secretary of Agriculture;

(C) the Secretary of Commerce; and

(D) the Secretary of the Interior.

(5) STATE WATER PROJECT.—The term “State Water Project” means the water project described by California Water Code section 11550 et seq., and operated by the California Department of Water Resources.

## SEC. 303. OPERATIONAL FLEXIBILITY IN TIMES OF DROUGHT.

(a) Water Supplies.—

(1) IN GENERAL.—In response to a declaration of a state of drought emergency by the Governor of California and for the period of time such a drought declaration remains in effect, the Secretaries shall provide the maximum quantity of water supplies practicable to Central Valley Project agricultural, municipal and industrial, and refuge service and repayment contractors, State Water Project contractors, and any other tribe, locality or municipality in the State, by approving, consistent with applicable laws (including regulations), projects and operations to provide additional water supplies as quickly as practicable based on available information to address the emergency conditions.

(2) APPLICATION.—Paragraph (1) applies to projects or operations involving the Klamath Project if the projects or operations would benefit Federal water contractors in the State.

(b) Administration.—In carrying out subsection (a), the Secretaries shall, consistent with applicable laws (including regulations)—

(1) issue all necessary permit decisions under the authority of the Secretaries not later than 30 days after the date on which the Secretaries receive a completed application from the State to place and use temporary barriers or operable gates in Delta channels to improve water quantity and quality for the State Water Project and the Central Valley Project south of Delta water contractors and other water users, on the condition that the barriers or operable gates—

(A) provide benefits for species protection and in-Delta water user water quality; and

(B) are designed so that formal consultations under section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) are not necessary;

(2) require the Director of the United States Fish and Wildlife Service and the

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Commissioner of Reclamation—

(A) to complete, not later than 30 days after the date on which the Director or the Commissioner receives a complete written request for water transfer associated with voluntarily fallowing nonpermanent crops in the State, all requirements under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) necessary to make final permit decisions on the request; and

(B) to grant any water transfer request described in subparagraph (A) to maximize the quantity of water supplies available for nonhabitat uses, on the condition that the fallowing and associated water transfer are in compliance with applicable Federal laws (including regulations);

(3) adopt a 1:1 inflow to export ratio for the increment of increased flow of the San Joaquin River, as measured as a 3-day running average at Vernalis during the period beginning on April 1, and ending on May 31, resulting from voluntary transfers and exchanges of water supplies, on the condition that a proposed transfer or exchange under this paragraph may only proceed if the Secretary of the Interior determines that the environmental effects of the proposed transfer or exchange are consistent with effects permissible under applicable law (including regulations), and Delta conditions are suitable to allow movement of the transfer water through the Delta consistent with Reclamation's permitted rights; and

(4) Provide additional priority for eligible WaterSMART projects that address drought conditions including projects that—

(A) provide emergency drinking and municipal water supplies to localities in a quantity necessary to meet minimum public health and safety needs;

(B) prevent the loss of permanent crops;

(C) minimize economic losses resulting from drought conditions; or

(D) provide innovative water conservation tools and technology for agriculture and urban water use that can have immediate water supply benefits.

(c) Accelerated Project Decision and Elevation.—

(1) IN GENERAL.— On request by the Governor of the State, the heads of Federal agencies shall use the expedited procedures under this subsection to make final decisions relating to a Federal project or operation if the project's or operation's purpose is to provide relief for emergency drought conditions pursuant to subsections (a) and (b).

(2) REQUEST FOR RESOLUTION.—

(A) IN GENERAL.—On request by the Governor of the State, the head of a Federal agency referenced in paragraph (1), or the head of another Federal agency responsible for carrying out a review of a project, as applicable, the Secretary of the Interior shall convene a final project decision meeting with the heads of all relevant Federal agencies to decide whether to approve a project to provide relief for emergency drought conditions.

(B) MEETING.—The Secretary of the Interior shall convene a meeting requested



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under subparagraph (A) not later than 7 days after the date on which the meeting request is received.

(3) NOTIFICATION.—On receipt of a request for a meeting under paragraph (2), the Secretary of the Interior shall notify the heads of all relevant Federal agencies of the request, including information on the project to be reviewed and the date of the meeting.

(4) DECISION.—Not later than 10 days after the date on which a meeting is requested under paragraph (2), the head of the relevant Federal agency shall issue a final decision on the project, subject to subsection (e)(2).

(5) MEETING CONVENED BY SECRETARY.—The Secretary of the Interior may convene a final project decision meeting under this subsection at any time, at the discretion of the Secretary, regardless of whether a meeting is requested under paragraph (2).

(d) Application.—To the extent that a Federal agency, other than the agencies headed by the Secretaries, has a role in approving projects described in subsections (a) and (b), this section shall apply to those Federal agencies.

(e) Limitation.—Nothing in this section authorizes the heads of applicable Federal agencies to approve projects—

(1) that would otherwise require congressional authorization; or

(2) without following procedures required by applicable law.

(f) 2015 Drought Plan. The Secretaries of Commerce and the Interior, in consultation with appropriate State officials, shall develop a drought operations plan for 2015 that is consistent with the provisions of this section and other provisions of this Act intended to provide additional water supplies that could be of assistance during the current drought.

## SEC. 304. OPERATION OF CROSS-CHANNEL GATES.

(a) In General.—The Secretary of Commerce and the Secretary of the Interior shall jointly—

(1) authorize and implement activities to ensure that the Delta Cross Channel Gates remain open to the maximum extent practicable using findings from the United States Geological Survey on diurnal behavior of juvenal salmonids, timed to maximize the peak flood tide period and provide water supply and water quality benefits for the duration of the drought emergency declaration of the State, consistent with operational criteria and monitoring criteria developed pursuant to the Order Approving a Temporary Urgency Change in License and Permit Terms in Response to Drought Conditions of the California State Water Resources Control Board, effective January 31, 2014 (or a successor order) and other authorizations associated with it;

(2) with respect to the operation of the Delta Cross Channel Gates described in paragraph (1), collect data on the impact of that operation on—

(A) species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(B) water quality; and

(C) water supply;

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(3) consistent with knowledge gained from activities carried out during 2014, collaborate with the California Department of Water Resources to install a deflection barrier at Georgiana Slough in coordination with Delta Cross Channel Gate diurnal operations to protect migrating salmonids;

**Commented [A4]:** Agencies are investigating the feasibility of diurnal operations.

(4) evaluate the combined salmonid survival in light of activities carried out pursuant to paragraphs (1) through (3) in deciding how to operate the Delta Cross Channel gates to enhance salmonid survival and water supply benefits; and

(5) not later than May 15, 2015, submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives a written report on the extent to which the gates are able to remain open.

(b) Recommendations.—After assessing the information collected under subsection (a), the Secretary of the Interior shall recommend revisions to the operation of the Delta Cross-Channel Gates, to the Central Valley Project, and to the State Water Project, including, if appropriate, any reasonable and prudent alternative contained in the biological opinion issued by the National Marine Fisheries Service on June 4, 2009, that are likely to produce fishery, water quality, and water supply benefits. The Secretary shall also coordinate with the State Water Resources Control Board to seek consistent direction for the operation of the Delta Cross-Channel Gates under federal and state law, including Water Right Decision 1641.

## SEC. 305. FLEXIBILITY FOR EXPORT/INFLOW RATIO.

In response to the declaration of a state of drought emergency by the Governor of California and for the period of time such a drought declaration remains in effect, the Commissioner of the Bureau of Reclamation shall continue to vary the averaging period of the Delta Export/Inflow ratio pursuant to the California State Water Resources Control Board decision D1641, approved in the March Temporary Urgency Change Order—

(1) to operate to a 35 percent Export/Inflow ratio with a 3 day averaging period on the rising limb of a Delta inflow hydrograph; and

(2) to operate to a 14 day averaging period on the falling limb of the Delta inflow hydrograph.

## SEC. 306. EMERGENCY ENVIRONMENTAL REVIEWS.

To minimize the time spent carrying out environmental reviews and to deliver water quickly that is needed to address emergency drought conditions in the State during the duration of an emergency drought declaration, the head of each applicable Federal agency shall, in carrying out this Act, consult with the Council on Environmental Quality in accordance with section 1506.11 of title 40, Code of Federal Regulations (including successor regulations), to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) during the emergency.

## SEC. 307. PRIORITIZING STATE REVOLVING FUNDS DURING DROUGHTS.

(a) In General.—This section shall apply for each of the fiscal years during which an emergency drought declaration of the State is in effect.

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(b) The Administrator of the Environmental Protection Agency, in implementing the processes and programs under the State water pollution control revolving funds established under title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) and the State drinking water treatment revolving loan funds established under section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12), shall, for those projects that are eligible to receive assistance under section 603 of the Federal Water Pollution Control Act (33 U.S.C. 1383) or section 1452(a)(2) of the Safe Drinking Water Act (42 U.S.C. 300j–12(a)(2)),

(1) issue a determination of waivers within 30 days of the conclusion of the informal public comment period pursuant to section 436(c) of title IV of division G of Public Law 113–76; and

(2) authorize, at the request of the State, 40-year financing for assistance under section 603(d)(2) of the Federal Water Pollution Control Act (33 U.S.C. 1383(d)(2)) or section 1452(f)(2) of the Safe Drinking Water Act (42 U.S.C. 300j–12(f)(2)).

(c) Effect of Section.—Nothing in this section authorizes the Administrator of the Environmental Protection Agency to modify any funding allocation, funding criteria, or other requirement relating to State water pollution control revolving funds established under title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) and the State drinking water treatment revolving loan funds established under section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12) for any other State.

## **SEC. 308. INCREASED FLEXIBILITY FOR REGULAR PROJECT OPERATIONS.**

The Secretaries shall, consistent with applicable laws (including regulations)—

(1) to the maximum extent practicable, based on the availability of water and without causing land subsidence or violating water quality standards—

(A) help meet the contract water supply needs of Central Valley Project refuges through the improvement or installation of water conservation measures, water conveyance facilities, and wells to use groundwater resources, on the condition that those activities may only be accomplished by using funding made available under the Water Assistance Program or the WaterSMART program of the Department of the Interior; and

(B) make available to Central Valley Project contractors a quantity of Central Valley Project surface water obtained from the activities carried out under subparagraph (A);

(2) contingent upon funding, in coordination with the Secretary of Agriculture, enter into an agreement with the National Academy of Sciences to conduct a comprehensive study, to be completed not later than 1 year after the date of enactment of this Act, on the effectiveness and environmental impacts of saltcedar biological control efforts on increasing water supplies and improving riparian habitats of the Colorado River and its principal tributaries, in the State and elsewhere;

(3) in coordination with the California Department of Water Resources and the California Department of Fish and Wildlife, implement offsite upstream projects in the Delta and upstream Sacramento River and San Joaquin basins that offset the effects on species listed

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as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) due to activities carried out pursuant this Act, as determined by the Secretaries;

(4) manage reverse flow in the Old and Middle Rivers as prescribed by the biological opinions issued by the United States Fish and Wildlife Service on December 15, 2008, for Delta smelt and by the National Marine Fisheries Service on June 4, 2009, for salmonids, or any successor biological opinions, to minimize water supply reductions for the Central Valley Project and the State Project, and issue guidance no later than December 31, 2015 directing their employees to take all steps necessary to manage flow in accordance with this paragraph;

(5) as soon as practicable after the date of enactment of this Act and pursuant to existing authority available to the Secretary of the Interior, participate in, issue grants, or otherwise provide funding for pilot projects to increase water in reservoirs in regional river basins experiencing extreme, exceptional, or sustained drought that have a direct impact on the water supply of the State, including the Colorado River Basin, on the condition that any participation, grant, or funding by the Secretary of the Interior with respect to the Upper Division shall be with or to the respective State; and

(6) use all available scientific tools to identify any changes to real-time operations of the Bureau of Reclamation, State, and local water projects that could result in the availability of additional water supplies.

**SEC. 309. TEMPORARY OPERATIONAL FLEXIBILITY  
FOR FIRST FEW STORMS OF 2015 WATER YEAR.**

(a) Findings:

(1) During the 2014 water year, operations of the Central Valley Project and the State Water Project, the incidental take of adult Delta smelt was zero; of juvenile Delta smelt, 78 (7.7% of the incidental take limit); of winter run chinook, 339 (1.4% of the incidental take limit); of spring run chinook, zero; and of steelhead, 261 (8.7% of the incidental take limit).

(2) The Central Valley Project and State Water Project exceeded a Old and Middle River flow of -5,000 cubic feet per second over a 14-day average for brief periods after three storm events in February and March 2014, as a result of increased pumping, but did not cause substantially increased take of smelt or salmon.

(3) Hydrological conditions in dry years, such as the 2014 water year, have not triggered water pumping restrictions pursuant to the 2008 smelt biological opinion.

(4) The Secretaries should be allowed more flexibility to increase pumping levels without causing significant risk to the listed species or weakening other environmental protections.

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(5) Given California's severe drought conditions, significant groundwater withdrawals for irrigation due to lack of surface water supplies, and the depletion of water supplies in reservoirs, it is imperative that the Secretaries exercise the flexibility provided herein to capture the maximum amount of storm flows when and if they occur in the 2015 water year, and provide for the diversion of those supplies to the Central Valley Project and State Water Project so that farms, businesses, and homes in drought-stricken areas will have an opportunity to bolster their meager supplies when water is available.

(b) In general. Consistent with avoiding additional adverse effects upon listed fish species beyond the range of those authorized under the Endangered Species Act and other environmental protections under subsection (e), the Secretaries shall authorize the Central Valley Project and the State Water Project, combined, to operate at levels that result in Old and Middle River flows at up to -7500 cubic feet per second (based on United States Geological Survey gauges on Old and Middle Rivers) daily average for up to 21 cumulative days after October 1, 2014, as described in subsection (c).

(c) Days of temporary operational flexibility. The temporary operational flexibility described in subsection (b) shall be authorized on days that the California Department of Water Resources determines the daily average river flow of the Sacramento River is at, or above, 17,000 cubic feet per second as measured at the Sacramento River at Freeport gauge maintained by the United States Geologic Survey.

(d) Compliance with ESA authorizations. In carrying out this section, the Secretaries may continue to impose any requirements under the biological opinions during any period of temporary operational flexibility as they determine are reasonably necessary to avoid additional adverse effects on listed fish species beyond the range of those authorized under the Endangered Species Act.

(e) Other environmental protections.

(1) The Secretaries' actions under this section shall be consistent with applicable regulatory requirements under state law, including State Water Resources Control Board Decision 1641, as it may be implemented in any given year;

(2) During the first flush of sediment out the Delta during the 2015 water year, OMR flow may be managed at rates less negative than -5000 cubic feet per second for a minimum duration to avoid movement of adult delta smelt (*Hypomesus transpacificus*) to areas in the southern Delta that would be likely to increase entrainment at Central Valley Project and State Water Project pumping plants;

(3) This section shall not have any effect on the applicable requirements of the salmonid biological opinion from April 1 to May 31, unless the Secretary of Commerce finds that some or all of such applicable requirements may be adjusted during this time period to provide emergency water supply relief without resulting in additional adverse effects beyond those authorized under the Endangered Species Act.

(4) During operations under this section, the Commissioner of Reclamation, in coordination with the Fish and Wildlife Service, National Marine Fisheries Service, and California Department of Fish and Wildlife, shall undertake a monitoring program and other data gathering to insure take limits levels are not exceeded, and to identify potential negative impacts and actions necessary to mitigate any impacts of the temporary operational

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flexibility to species listed as threatened or endangered under the Endangered Species Act, 16 U.S.C. 1531-1544; and

(5) The Commissioner is authorized to take any action, including the transfer of appropriated funds between accounts that, in the Commissioner's judgment, are necessary to mitigate the impacts of such operations as long as any such mitigation is consistent with the requirements of this section.

(f) Technical adjustments to target period. If, before temporary operational flexibility has been implemented on 21 cumulative days, the Secretaries operate the Central Valley Project and the State Water Project combined at levels that result in Old and Middle River flows less negative than -7500 cubic feet per second during days of temporary operational flexibility as defined in subsection (c), the duration of such operation shall not be counted toward the 21 cumulative days specified in subsection (b).

(g) Emergency consultation; effect on running averages.

(1) If necessary to implement the provisions of this section, the Commissioner shall use the emergency consultation procedures under the Endangered Species Act and its implementing regulation at 50 CFR 402.05 to temporarily adjust the operating criteria under the biological opinions, solely for the 21 days of temporary operational flexibility—

(A) no more than necessary to achieve the purposes of this section consistent with the environmental protections in subsections (d) and (e); and

(B) including, as appropriate, adjustments to ensure that the actual flow rates during the periods of temporary operational flexibility do not count toward the 5-day and 14-day running averages of tidally filtered daily Old and Middle River flow requirements under the biological opinions.

(2) Following the conclusion of the 21 days of temporary operational flexibility, the Commissioner shall not reinitiate consultation on these adjusted operations if the effects on listed fish species of these operations under this section remain within the range of those authorized under the Endangered Species Act.

(h) Level of detail required for analysis. In articulating the determinations required under this section, the Secretaries shall fully satisfy the requirements herein but shall not be expected to provide a greater level of supporting detail for the analysis than feasible to provide within the short time frame permitted for timely decision-making in response to changing conditions in the Delta.

(i) Duration. This section shall expire on September 30, 2015.

## **SEC. 310. EXPEDITING WATER TRANSFERS.**

(a) In General.—Section 3405(a) of the Central Valley Project Improvement Act (Public Law 102-575; 106 Stat. 4709(a)) is amended—

(1) by redesignating paragraphs (1) through (3) as paragraphs (4) through (6), respectively;

(2) in the matter preceding paragraph (4) (as so designated)—

(A) in the first sentence, by striking "In order to" and inserting the following:

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“(1) IN GENERAL.—In order to”; and

(B) in the second sentence, by striking “Except as provided herein” and inserting the following:

“(3) TERMS.—Except as otherwise provided in this section”; and

(3) by inserting before paragraph (3) (as so designated) the following:

“(2) EXPEDITED TRANSFER OF WATER.—The Secretary shall take all necessary actions to facilitate and expedite transfers of Central Valley Project water in accordance with—

“(A) this Act;

“(B) any other applicable provision of the reclamation laws; and

“(C) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).”;

(4) in paragraph (4) (as so designated)—

(A) in subparagraph (A), by striking “to combination” and inserting “or combination”; and

(B) by striking “3405(a)(2) of this title” each place it appears and inserting “(5)”;

(5) in paragraph (5) (as so designated), by adding at the end the following:

“(E) The contracting district from which the water is coming, the agency, or the Secretary shall determine if a written transfer proposal is complete within 45 days after the date of submission of the proposal. If the contracting district or agency or the Secretary determines that the proposal is incomplete, the district or agency or the Secretary shall state with specificity what must be added to or revised for the proposal to be complete.”; and

(6) in paragraph (6) (as so designated), by striking “3405(a)(1)(A)-(C), (E), (G), (H), (I), (L), and (M) of this title” and inserting “(A) through (C), (E), (G), (H), (I), (L), and (M) of paragraph (4)”.

(b) Conforming Amendments.—The Central Valley Project Improvement Act (Public Law 102–575) is amended—

(1) in section 3407(c)(1) (106 Stat. 4726), by striking “3405(a)(1)(C)” and inserting “3405(a)(4)(C)”;

(2) in section 3408(i)(1) (106 Stat. 4729), by striking “3405(a)(1) (A) and (J) of this title” and inserting “subparagraphs (A) and (J) of section 3405(a)(4)”

**SEC. 311. WARREN ACT CONTRACTS.**

[To be supplied.]

**SEC. 312. ADDITIONAL WARREN ACT CONTRACTS.**

[To be supplied.]

**TITLE IV—INCREASING WATER STORAGE**

**SEC. 401. FINDINGS.**

Congress finds that—

(1) the record drought conditions being experienced in the State as of the date of enactment of this Act are—

(A) expected to recur in the future; and

(B) likely to do so with increasing frequency;

(2) water storage is an indispensable and integral part of any solution to address the long-term water challenges of the State;

(3) Congress authorized relevant feasibility studies for 4 water storage projects in the State, including projects for—

(A) enlargement of Shasta Dam in Shasta County under section 2(a) of Public Law 96–375 (94 Stat. 1506), as reaffirmed under section 103(d)(1)(A)(i)(I) of Public Law 108–361 (118 Stat. 1684);

(B) enlargement of Los Vaqueros Reservoir in Contra Costa County under section 215 of Public Law 108–7 (117 Stat. 147), as reaffirmed under section 103(d)(1)(A)(i)(II) of Public Law 108–361 (118 Stat. 1684);

(C) construction of North-of-Delta Offstream Storage (Sites Reservoir) in Colusa County under section 215 of Public Law 108–7 (117 Stat. 147), as reaffirmed under section 103(d)(1)(A)(ii)(I) of Public Law 108–361 (118 Stat. 1684); and

(D) construction of the Upper San Joaquin River storage (Temperance Flat) in Fresno and Madera Counties under section 215 of Public Law 108–7 (117 Stat. 147), as reaffirmed under section 103(d)(1)(A)(ii)(II) of Public Law 108–361 (118 Stat. 1684);

(4) (A) as of the date of enactment of this Act, it has been more than 10 years since the authorization of the feasibility studies referred to in paragraph (3); but

(B) complete and final feasibility studies have not been prepared for any of those water storage projects;

(5) as of August 2014, only 2 of the 4 projects referred to in paragraph (3) have completed draft feasibility studies;

(6) the slow pace of work on completion of the feasibility studies for those 4 water storage projects is—

(A) unjustified; and

(B) of deep concern; and

(7) there is significant public interest in, and urgency with respect to, completing all feasibility studies and environmental reviews for the water storage projects referred to in paragraph (3), given the critical need for that infrastructure to address the water challenges of the State.



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**SEC. 402. CALFED STORAGE FEASIBILITY STUDIES.**

(a) In General.—Notwithstanding subparagraph (B)(i) of section 103(d)(1) of Public Law 108–361 (118 Stat. 1684), the Secretary of the Interior, acting through the Commissioner of Reclamation (referred to in this title as the “Secretary”), shall complete a final feasibility study and any other applicable environmental review documents for the project described in—

(1) subparagraph (A)(i)(I) of that section by not later than December 31, 2014;

(2) subparagraph (A)(ii)(II) of that section by not later than July 31, 2015.

(b) Environmental Reviews.—In carrying out subsection (a), the Secretary—

(1) shall ensure that—

(A) all applicable reviews, including reviews required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), are completed as expeditiously as practicable; and

(B) the shortest applicable process under that Act is used, including in the completion of—

(i) feasibility studies;

(ii) draft environmental impact statements; and

(iii) final environmental impact statements; and

(2) shall not be required to complete a draft or final environmental impact statement if the Commissioner of Reclamation determines, and the Secretary concurs, that the project fails to meet applicable Federal cost-benefit requirements or standards.

(c) Accountability.—

(1) If the Bureau of Reclamation determines that an environmental review document for the water storage projects referenced in of Section 103(d)(1) of P.L. 108-361 will not be completed according to the schedule specified in subsection (a), the Bureau shall notify the Senate Committee on Energy and Natural Resources, the Senate Appropriations Subcommittee on Energy and Water Development, and the House of Representatives Transportation and Infrastructure Committee within 14 days of the determination. The notification shall include:

(A) An explanation of the delay;

(B) The anticipated length of the delay and the revised completion date;

(C) The steps that the Bureau will take to mitigate the delay, including, but not limited to, a request to reprogram existing funds appropriated to the Bureau to meet the revised completion deadline.

(2) The Bureau of Reclamation shall carry out the procedures in subsection (a) for each subsequent delay beyond the revised completion deadline.

**SEC. 403. WATER STORAGE PROJECT CONSTRUCTION.**

(a) The Secretary, acting through the Commissioner of the Bureau of Reclamation, may partner or enter into an agreement on the water storage projects identified in section 103(d)(1) of

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the Water Supply Reliability and Environmental Improvement Act (Public Law 108-361) (and Acts supplemental and amendatory to the Act) with local joint powers authorities formed pursuant to State law by irrigation districts and other local water districts and local governments within the applicable hydrologic region, to advance those projects.

(b) [PLACEHOLDER FOR AUTHORIZATION ISSUE]

**SEC. 404. OTHER STORAGE FEASIBILITY STUDIES.**

(a) Definition of Qualifying Project.—In this section, the term “qualifying project” means new surface water storage projects constructed on lands administered by the Department of the Interior in a State in which the Bureau of Reclamation has jurisdiction, exclusive of any easement, right-of-way, lease, or any private holding.

(b) Lead Agency.—

(1) QUALIFYING PROJECTS WITHIN JURISDICTION OF BUREAU OF RECLAMATION.—The Bureau of Reclamation shall serve as the lead agency for purposes of coordinating all reviews, analyses, opinions, statements, permits, licenses, and other approvals or decisions required under Federal law (including regulations) to construct qualifying projects within the jurisdiction of the Bureau.

(2) QUALIFYING PROJECTS OUTSIDE JURISDICTION OF BUREAU OF RECLAMATION.—If the site of a qualifying project is not located in a State in which the Bureau of Reclamation has jurisdiction, the Secretary shall, by not later than 45 days after the date of receipt of an application for the qualifying project—

(A) designate an alternate agency within the Department of the Interior to serve as the lead agency for purposes of coordinating all reviews, analyses, opinions, statements, permits, licenses, and other approvals or decisions required under Federal law (including regulations) to construct the qualifying project; or

(B) in consultation with the heads of other Federal departments and agencies, identify the appropriate lead agency for the qualifying project.

(c) Cooperating Agencies.—

(1) FEDERAL DEPARTMENTS AND AGENCIES.—The lead agency designated under paragraph (1) or (2) of subsection (b) shall—

(A) as soon as practicable after receipt of an application for a qualifying project, identify any Federal department or agency that may have jurisdiction over a review, permit, license, approval, or decision required for the qualifying project under applicable Federal laws (including regulations); and

(B) as soon as practicable after the date of identification under subparagraph (A)—

(i) notify each applicable department or agency of the identification; and

(ii) designate the department or agency as a cooperating agency, unless the department or agency—

(I) has no jurisdiction or authority with respect to the qualifying project;

(II) has no expertise or information relevant to the qualifying project or

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any review, permit, license, approval, or decision associated with the qualifying project; or

(III) does not intend—

(aa) to submit comments regarding the qualifying project; or

(bb) to conduct any review of the qualifying project or make any decision with respect to the qualifying project in a manner other than in cooperation with the Bureau of Reclamation.

(2) STATES.—A State in which a qualifying project is proposed to be carried out may elect, consistent with Federal and State law, to participate as a cooperating agency, if the lead agency designated for the proposed qualifying project under paragraph (1) or (2) of subsection (b) determines that the applicable agency of the State—

(A) has jurisdiction over the qualifying project under applicable Federal or State law;

(B) is required to conduct or issue a review of the qualifying project; and

(C) is required to make a determination regarding issuing a permit, license, or approval of the qualifying project.

(d) Duties of Lead Agency.—

(1) IN GENERAL.—Not later than 30 days after the date of receipt of an application for approval of a qualifying project, the lead agency shall hold a meeting among the applicant, the lead agency, and all cooperating agencies to establish, with respect to the qualifying project, all applicable—

(A) requirements;

(B) review processes; and

(C) stakeholder responsibilities.

(2) SCHEDULE.—

(A) ESTABLISHMENT.—Not later than 30 days after the date of the meeting under paragraph (1), the lead agency, in consultation with the attendees of the meeting, shall establish a schedule for completion of the qualifying project, taking into consideration, among other relevant factors—

(i) the responsibilities of cooperating agencies under applicable laws and regulations;

(ii) the resources available to the cooperating agencies and non-Federal project stakeholders;

(iii) the overall size and complexity of the qualifying project;

(iv) the overall schedule for, and cost of, the qualifying project; and

(v) the sensitivity of the natural and historic resources that may be affected by the qualifying project.

(B) REQUIREMENTS.—On establishment of a schedule for a qualifying project under

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subparagraph (A), the lead and cooperating agencies shall—

(i) to the maximum extent practicable, adhere to the schedule; and

(ii) submit to the Committee on Environment and Public Works of the Senate and the Committee on Natural Resources of the House of Representatives on a semiannual basis a report describing any delays in the schedule, including a description of—

(I) the reasons for the delay;

(II) the actions that the lead and cooperating agencies will take to minimize the delay; and

(III) a revised schedule for the qualifying project, if applicable.

(e) Environmental Reviews.—

(1) SINGLE, UNIFIED ENVIRONMENTAL REVIEW DOCUMENT.—

(A) IN GENERAL.—The lead agency with respect to a qualifying project, in consultation with appropriate stakeholders and cooperating agencies, shall determine whether a single, unified environmental review document relating to the qualifying project is sufficient to comply with applicable Federal laws (including regulations), including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(B) ACTION ON DECLINATION.—If, after consultation under subparagraph (A), a lead agency determines not to adopt a single, unified environmental review document relating to a qualifying project—

(i) the lead agency shall—

(I) document the reasons for the determination; and

(II) submit to the Secretary a report describing those reasons; and

(ii) the Secretary may require the adoption of a single, unified document at the discretion of the Secretary, based on good cause.

(2) ENVIRONMENTAL ASSESSMENT.—Except as provided under paragraph (4), if the lead agency with respect to a qualifying project, in consultation with cooperating agencies, determines that an environmental assessment is sufficient to comply with the requirements of this subsection and other applicable Federal laws (including regulations)—

(A) the public comment period for a draft environmental assessment shall be no more than 60 days after publication in the Federal Register of notice of the public issuance of that draft; and

(B) the lead agency shall issue the final environmental assessment by not later than 180 days after the end of the period for public comments on the draft environmental assessment.

(3) ENVIRONMENTAL IMPACT STATEMENT.— Except as provided under paragraph (4), if the lead agency with respect to a qualifying project, in consultation with cooperating agencies, determines that an environmental impact statement is required to comply with the requirements of this subsection and other applicable Federal laws (including regulations)—

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(A) the public comment period for a draft environmental impact statement shall be no more than 60 days after publication in the Federal Register of notice of the public issuance of that draft; and

(B) the lead agency shall issue the final environmental impact statement by not later than 1 year after the end of the period for public comments on the draft environmental impact statement.

(4) MODIFICATION OF SCHEDULE.—In carrying out paragraphs (2) and (3),

(A) the lead agency with respect to a qualifying project may modify the schedule of the qualifying project if:

(i) the Federal lead agency can demonstrate good cause, such as the need for additional time to comply with other statutory or regulatory requirements other than the National Environmental Policy Act of 1969, and the head of that agency submits to Congress a written determination describing the cause and reasons for the modification no less than 30 days before the original scheduled deadline; or

(ii) the Federal lead agency, the project sponsor, the joint lead agency (as applicable), and all participating and cooperating agencies agree to such modification.

(B) no modification pursuant to subparagraph (4)(A) shall postpone the issuance of a final environmental assessment by more than 1 year, or a final environmental impact statement by more than 2 years, unless the conditions under (4)(A)(i) or (4)(A)(ii) are met.

(C) If a modification occurs pursuant to this paragraph, the Federal lead agency shall issue and adhere to the revised schedule unless the conditions under (4)(A)(i) or (4)(A)(ii) are met.

(5) REQUIREMENTS.—On commencement of the environmental review process under this subsection, the lead and cooperating agencies shall, as soon as practicable—

(A) make available to all stakeholders of the qualifying project information regarding—

(i) the environmental and socioeconomic resources located within the area of the qualifying project; and

(ii) the general locations of the alternatives under consideration; and

(B) identify any issues of concern regarding the potential environmental or socioeconomic effects of the qualifying project, including any issues that could substantially delay or prevent an agency from granting a permit or other approval that is needed for a study relating to the qualifying project.

(f) Concurrent Review Actions.—

(1) IN GENERAL.—Any review, analysis, permit, license, approval, or decision regarding a qualifying project made by a Federal, State, or local government agency shall be—

(A) conducted, to the maximum extent practicable, concurrently with any other applicable government agency; and

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(B) incorporated in the schedule for the qualifying project under subsection (d)(2).

(2) REQUIREMENT.—The lead and cooperating agencies for a qualifying project shall formulate and implement administrative, policy, and procedural mechanisms to enable adherence to the schedule for the qualifying project in a timely, coordinated, and environmentally responsible manner.

(3) GUIDANCE.—The Secretary shall issue guidance regarding the use of programmatic approaches to carry out the environmental review process that, to the maximum extent practicable—

(A) eliminates repetitive discussions of the same issues;

(B) focuses on the actual issues ripe for analysis at each level of review;

(C) establishes a formal process for coordinating with participating and cooperating agencies, including the establishment of a list of all data required to carry out an environmental review process; and

(D) complies with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and all other applicable laws and regulations.

(g) Administrative Record and Data Management.—

(1) IN GENERAL.—The lead agency shall—

(A) be responsible for compiling the administrative record of the information used as the basis for decisions relating to a qualifying project; and

(B) to the maximum extent practicable and consistent with Federal law, make available all data regarding the qualifying project in a format that is accessible via electronic means for project stakeholders, cooperating agencies, and the public.

(2) REPORTS.—Not less frequently than once each year, the lead agency shall submit a progress report regarding a qualifying project to project stakeholders, cooperating agencies, the Committee on Environment and Public Works of the Senate, and the Committee on Natural Resources of the House of Representatives.

(h) Participation by Non-Federal Project Sponsors.—

(1) APPLICATION TO SERVE AS COOPERATING AGENCY.—A non-Federal sponsor of a qualifying project may submit to the lead Secretary an application to serve as a cooperating agency of the qualifying project for purposes of preparing any necessary documents relating to the qualifying project, including an environmental review, if—

(A) the non-Federal sponsor is a public agency as defined under the laws of the state in which the agency is located;

(B) the non-Federal sponsor agrees to adhere to—

(i) all required Federal laws (including regulations) in carrying out the qualifying project; and

(ii) all decisions regarding the qualifying project that have been agreed on by other stakeholders of the qualifying project; and

(C) the applicable lead agency certifies that participation by the non-Federal sponsor

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will not inappropriately bias the qualifying project in favor of the non-Federal sponsor.

(2) FUNDS.—Any funds contributed by a non-Federal sponsor to a qualifying project—

(A) may be accepted to maintain or accelerate progress on the qualifying project, subject to the condition that the Secretary shall—

(i) review the use of the funds; and

(ii) certify in writing that the funds—

(I) are used solely to complete applicable environmental reviews; and

(II) do not unduly influence any permit or approval decision regarding the qualifying project; and

(B) shall be applied toward the non-Federal cost-share of the qualifying project.

(i) Applicability to Calfed Storage Studies.—For any feasibility study referred to in section 401(3), this section shall apply to all activities to be carried out under the study on or after the date of enactment of this Act that would lead to congressional authorization of an applicable project for construction.

## **SEC. 405. DAM SAFETY PROJECTS WITH INCREASED STORAGE COMPONENT.**

(a) Additional Project Benefits.—The Reclamation Safety of Dams Act of 1978 is amended—

(1) in section 3 (43 U.S.C. 507), by striking “Construction” and inserting “Except as provided in section 5B, construction”; and

(2) by inserting after section 5A (43 U.S.C. 509a) the following:

### **“SEC. 5B. ADDITIONAL PROJECT BENEFITS.**

“(a) In General.—Notwithstanding section 3, if the Secretary, in the judgment of the Secretary, makes a determination described in subsection (b), the Secretary is authorized to develop any additional project benefit—

“(1) through the construction of new or supplementary works on a project in conjunction with the activities carried out by the Secretary pursuant to section 2; and

“(2) subject to the conditions described in the feasibility study relating to the project.

“(b) Description of Determination.—A determination referred to in subsection (a) is a determination by the Secretary that—

“(1) an additional project benefit, including but not limited to additional conservation storage capacity, is—

“(A) necessary; and

“(B) in the interests of the United States; and

“(2) the project benefit proposed to be carried out is—

“(A) feasible; and

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“(B) not inconsistent with the purposes of this Act.

“(c) Requirements.—The costs associated with developing an additional project benefit under this section shall be—

“(1) allocated to entity or entities benefitting from the additional conservation storage capacity, subject to agreement between the state and federal funding agencies on such allocations; and

“(2) repaid in accordance with all applicable provisions of Federal reclamation law (the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act (43 U.S.C. 371 et seq.).”.

(b) San Luis Reservoir Expansion.—Section 103(f)(1)(A) of Public Law 108–361 (118 Stat. 1694) is amended—

(1) by striking “Funds” and inserting the following:

“(i) IN GENERAL.—Funds”; and

(2) by adding at the end the following:

“(ii) ENVIRONMENTAL REVIEWS AND FEASIBILITY STUDY.—The Commissioner of Reclamation shall submit to Congress—

“(I) an expansion draft environmental impact statement and feasibility study relating to the San Luis Reservoir by not later than April 1, 2016; and

“(II) a final environmental impact statement relating to the San Luis Reservoir by not later than December 31, 2016.”.

**SEC. 406. UPDATING WATER OPERATIONS MANUALS FOR NON-FEDERAL PROJECTS.**

(a) Definitions.—In this section:

(1) NON-FEDERAL PROJECT.—

(A) IN GENERAL.—The term “non-Federal project” means a non-Federal reservoir project operated for flood control in accordance with rules prescribed by the Secretary pursuant to section 7 of the Act of December 22, 1944 (commonly known as the “Flood Control Act of 1944”) (58 Stat. 890, chapter 665).

(B) EXCLUSION.—The term “non-Federal project” does not include any dam or reservoir owned by—

(i) the Bureau of Reclamation; or

(ii) the Corps of Engineers.

(2) OWNER.—The term “owner” with respect to a non-Federal project, does not include—

(A) the Secretary;

(B) the Secretary of the Interior; or

(C) the head of any other Federal department or agency, notwithstanding any



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Federal monetary contribution made toward the construction cost of the relevant non-Federal project, if the contribution is predicated on flood control or other specific benefit.

(3) SECRETARY.—The term “Secretary” means the Secretary of the Army.

(b) Review by Secretary.—

(1) IN GENERAL.—Not later than 1 year after the date of receipt of a request from the owner of a non-Federal project, the Secretary, in consultation with the owner, shall review the water control manual and flood control rule curves and any operational or structural modifications proposed by the owner, including the use of improved weather forecasting and run-off forecasting methods, to enhance the existing purposes of the non-Federal project.

(2) REPORT.—Not later than 90 days after the date of completion of a review under paragraph (1), the Secretary shall submit to the owner of the applicable non-Federal project a report describing the results of the review.

(3) PRIORITY.—In carrying out of this subsection, the Secretary shall give priority to review and revision of water control manuals and flood control rule curves for any non-Federal project—

(A) that is located in a State in which a drought emergency has been declared during the 1-year period ending on the date of review by the Secretary;

(B) the owner of which has submitted to the Secretary a formal request to review or revise the operations manual or rule curves to accommodate new watershed data or proposed project modifications or operational changes;

(C) the water control manual and hydrometeorological information establishing the flood control rule curves of which have not been revised during the 20-year period ending on the date of review by the Secretary;

(D) with respect to which a completed probable maximum flood analysis or other data indicates that revisions of the project control manual or rule curves are likely to enhance water supply benefits and flood control operations; and

(E) modifications or operational changes proposed by the owner of which are likely to enhance water supply benefits and flood control operations.

(4) NON-FEDERAL CONTRIBUTIONS.—The Secretary may accept non-Federal funds for all or a portion of the cost of carrying out a review or revision of water control manuals and rule curves for non-Federal projects under this subsection.

## SEC. 407. CENTRAL VALLEY PROJECT.

(a) Cooperative Agreements.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, to determine the feasibility of an agreement for long-term use of an existing or expanded non-Federal storage or conveyance facility to augment Federal water supply, ecosystem, and operational flexibility benefits, the Secretary shall offer to enter into cooperative agreements with non-Federal entities to provide replacement water supplies for drought relief for—

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(A) contractors of the Central Valley Project (as defined in section 3403 of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706));

(B) units of the National Wildlife Refuge System;

(C) State wildlife areas; and

(D) private wetland areas.

(2) REQUIREMENTS.—A cooperative agreement under this subsection shall—

(A) include the purchase of storage capacity in non-Federal facilities from willing sellers; and

(B) provide reimbursement for the temporary use of available capacity in existing above-ground, off-stream storage and associated conveyance facilities owned by local water agencies.

(b) Report.—Not later than 2 years after the date of enactment of this Act, the Secretary shall submit to the Chief of the National Wildlife Refuge System and contractors of the Central Valley Project a report describing the feasibility of the agreement for long-term use described in subsection (a)(1).

## TITLE V—WATER RIGHTS PROTECTIONS

### SEC. 501. PROTECTIONS FOR STATE WATER PROJECT CONTRACTORS.

If, as a result of the application of this Act, the California Department of Fish and Wildlife:

(a) revokes the consistency determination pursuant to California Fish and Game Code section 2080.1;

(b) amends or issues a new consistency determination pursuant to California Fish and Game Code section 2080.1 in a manner that results in reduced water supply to the State Water Project as compared with the water supply available under the Smelt Biological Opinion and the Salmonid Biological Opinion; or

(c) requires take authorization under section 2081 for operation of the State Water Project in a manner that results in reduced water supply to the State Water Project as compared with the water supply available under the Smelt Biological Opinion and the Salmonid Biological Opinion,

then, the water supply benefits of such action by the California Department of Fish and Wildlife accruing to the Central Valley Project, if any, shall be shared equally with the State Water Project.

### SEC. 502. AREA OF ORIGIN PROTECTIONS.

(a) The Secretary of the Interior (Secretary) is directed in the operation of the Central Valley Project (CVP) to adhere to California's water rights laws governing water rights priorities by honoring water rights senior to those held by the United States for operation of the CVP, regardless of the source of priority, including any appropriative water rights initiated prior to

**Commented [A5]:** The agencies have not had a chance to fully analyze this Title. We expect the House to provide further suggestions, and we will seek the agencies' technical feedback on the entire title with the House's suggestions included.

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December 19, 1914, as well as water rights and other priorities perfected or to be perfected pursuant to California Water Code Part 2 of Division 2. Article 1.7 (commencing with section 1215 of Chapter 1 of Part 2 of Division 2, Sections 10505, 10505.5, 11128, 11460, 11461, 11462 and 11463, and Sections 12200 to 12220, inclusive).

(b) Any action that requires that diversions be bypassed or that involves the release of water from any CVP water storage facility taken by the Secretary or the Secretary of the Department of Commerce pursuant to Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531, et seq.) shall be applied in a manner that is consistent with water rights priorities established by California law.

**SEC. 503. NO REDIRECTED ADVERSE IMPACTS.**

The Secretary shall ensure that, except as otherwise provided for in a water service or repayment contract, actions taken in compliance with legal obligations imposed pursuant to or as a result of this Act, including, but not limited to, such actions under the Endangered Species Act of 1973 (16 U.S.C. § 1531 et seq.) and other federal laws, shall not cause redirected adverse water supply or fiscal impacts to those within the Sacramento River Watershed or the State Water Project.

**SEC. 504. EFFECT ON STATE LAWS.**

Nothing in this Act preempts any State law in effect on the date of enactment of this Act, including area of origin and other water rights protections.

**TITLE VI—MISCELLANEOUS**

**SEC. 601. AUTHORIZED SERVICE AREA.**

(a) In General.—The authorized service area of the Central Valley Project authorized under the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706) shall include the area within the boundaries of the Kettleman City Community Services District, California, as in existence on the date of enactment of this Act.

(b) Long-term Contract.—

(1) IN GENERAL.—Notwithstanding the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706) and subject to paragraph (2), the Secretary of the Interior, in accordance with the reclamation laws, shall enter into a long-term contract with the Kettleman City Community Services District, California, under terms and conditions mutually agreeable to the parties, for the delivery of up to 900 acre-feet of Central Valley Project water for municipal and industrial use.

(2) LIMITATION.—Central Valley Project water deliveries authorized under the contract entered into under paragraph (1) shall be limited to the minimal quantity necessary to meet the immediate needs of the Kettleman City Community Services District, California, in the event that local supplies or State Water Project allocations are insufficient to meet those needs.

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(c) Permit.—The Secretary shall apply for a permit with the State for a joint place of use for water deliveries authorized under the contract entered into under subsection (b) with respect to the expanded service area under subsection (a), consistent with State law.

(d) Additional Costs.—If any additional infrastructure, water treatment, or related costs are needed to implement this section, those costs shall be the responsibility of the non-Federal entity.

## SEC. 602. RESCHEDULED WATER.

(a) In General.—In connection with operations of the Central Valley Project, California, if the San Luis Reservoir does not fill by the last day of February of any year, the Secretary of the Interior shall permit any entity with an agricultural water service or repayment contract for the delivery of water from the Delta Division or the San Luis Unit to reschedule into the immediately following contract year (March 1 through the last day of February) any unused Central Valley Project water previously allocated for irrigation purposes.

(b) Apportionment.—If water remaining in Federal storage in San Luis Reservoir on the last day of February of any year is insufficient to meet all rescheduling requests under subsection (a), the Secretary of the Interior shall, based on contract quantity, apportion among all contractors that request to reschedule water all water remaining in San Luis Reservoir on the last day of February of the applicable year.

(c) Availability of Additional Water.—The Secretary shall make all reasonable efforts to make available additional rescheduled water, if the efforts do not interfere with the Central Valley Project operations in the contract year for which Central Valley Project water has been rescheduled.

## SEC. 603. FISHERIES DISASTER DECLARATION.

[TO BE SUPPLIED.]

## SEC. 604. OVERSIGHT BOARD FOR RESTORATION FUND.

(a) Report; Advisory Board.—Section 3407 of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4726) is amended by adding at the end the following:

“(g) Report on Expenditure of Funds.—

“(1) IN GENERAL.—For each fiscal year, the Secretary, in consultation with the Advisory Board, shall submit to Congress a plan for the expenditure of all of the funds deposited into the Restoration Fund during the preceding fiscal year.

“(2) CONTENTS.—The plan shall include an analysis of the cost-effectiveness of each expenditure.

“(h) Advisory Board.—

“(1) ESTABLISHMENT.—There is established the Restoration Fund Advisory Board (referred to in this section as the ‘Advisory Board’), which shall be composed of 14 members appointed by the Secretary.

“(2) MEMBERSHIP.—

**Commented [A6]:** The agencies are still reviewing the contents of this section. We anticipate the House will provide further suggestions, and we intend to seek the agencies' technical feedback on this language as modified by the House's suggestions.

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1 “(A) IN GENERAL.—The Secretary shall appoint members to the Advisory Board that  
2 represent the various Central Valley Project stakeholders, of whom—

3 “(i) 3 members shall be agricultural users of the Central Valley Project;

4 “(ii) 2 members shall be municipal and industrial users of the Central Valley  
5 Project;

6 “(iii) 3 members shall be power contractors of the Central Valley Project;

7 “(iv) 1 member shall be a representative of a federal wildlife refuge that  
8 contracts for Central Valley Project water supplies with the Bureau of  
9 Reclamation;

10 “(v) 1 member shall represent nongovernmental organizations involved in the  
11 protection and restoration of California fisheries;

12 “(vi) 1 member shall represent the commercial fishing industry;

13 “(vii) 1 member shall represent the recreational fishing industry; and

14 “(viii) 2 members shall be appointed at the discretion of the Secretary.

15 “(B) OBSERVER.—The Secretary and the Secretary of Commerce may each  
16 designate a representative to act as an observer of the Advisory Board.

17 “(C) CHAIRMAN.—The Secretary shall appoint 1 of the members described in  
18 subparagraph (A) to serve as Chairman of the Advisory Board.

19 “(3) TERMS.—The term of each member of the Advisory Board shall be 4 years.

20 “(4) DATE OF APPOINTMENTS.—The appointment of a member of the Panel shall be made  
21 not later than—

22 (A) the date that is 120 days after the date of enactment of this Act; or

23 (B) in the case of a vacancy on the Panel described in subsection (c)(2), the date  
24 that is 120 days after the date on which the vacancy occurs.

25 “(5) Vacancies.—

26 (A) IN GENERAL.—A vacancy on the Panel shall be filled in the manner in which  
27 the original appointment was made and shall be subject to any conditions that applied  
28 with respect to the original appointment.

29 (B) FILLING UNEXPIRED TERM.—An individual chosen to fill a vacancy shall be  
30 appointed for the unexpired term of the member replaced.

31 (C) EXPIRATION OF TERMS.—The term of any member shall not expire before the  
32 date on which the successor of the member takes office.

33 “(6) Removal —A Member of the Panel may be removed from office by the Secretary of  
34 the Interior.

35 “(7) Federal Advisory Committee Act. —The Panel shall not be subject to the  
36 requirements of the Federal Advisory Committee Act.

37 “(8) DUTIES.—The duties of the Advisory Board are—

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1 “(A) to meet not less frequently than semiannually to develop and make  
2 recommendations to the Secretary regarding priorities and spending levels on projects  
3 and programs carried out under this title;

4 “(B) to ensure that any advice given or recommendation made by the Advisory  
5 Board reflects the independent judgment of the Advisory Board;

6 “(C) not later than December 31, 2015, and annually thereafter, to submit to the  
7 Secretary and Congress the recommendations under subparagraph (A); and

8 “(D) not later than December 31, 2015, and biennially thereafter, to submit to  
9 Congress a report that details the progress made in achieving the actions required  
10 under section 3406.

11 “(9) ADMINISTRATION.—With the consent of the appropriate agency head, the Advisory  
12 Board may use the facilities and services of any Federal agency.”

13 “(10) Cooperation and Assistance.—

14 (A) Upon request of the Panel Chairperson for information or assistance to facilitate  
15 the carrying out of this section, the Secretary of the Interior shall promptly provide such  
16 information, unless otherwise prohibited by law.

17 (B) Space and Assistance.—The Secretary of the Interior shall provide the Panel  
18 with appropriate and adequate office space, together with such equipment, office  
19 supplies, and communications facilities and services as may be necessary for the  
20 operation of the Panel, and shall provide necessary maintenance services for such  
21 offices and the equipment and facilities located therein.

22 **SEC. 605. WATER OPERATIONS REVIEW PANEL.**

23 (a) Establishment.—There is established a panel to be known as the “Water Operations  
24 Review Panel”.

25 (b) Membership.—

26 (1) COMPOSITION.—The Panel shall be composed of 5 members appointed by the  
27 Secretary of the Interior, in consultation with the Secretary of Commerce, of whom—

28 (A) 1 member shall be a former State elected official, who shall be the Chairperson  
29 of the Panel;

30 (B) 2 members shall be fisheries biologists, of whom—

31 (i) 1 member shall have expertise in Delta smelt; and

32 (ii) 1 member shall have expertise in salmonids; and

33 (C) 2 members shall be engineers with substantial expertise in water operations.

34 (2) RECOMMENDATIONS. —The Secretary of the Interior shall consider the  
35 recommendations

36 (A) of the Governor of the State for the member appointed under subparagraph (1)(A);

37 (B) of the Director of the California Department of Water Resources for one of the  
38 members appointed under subparagraph (1)(C).

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(3) PROHIBITION ON FEDERAL GOVERNMENT EMPLOYMENT.—For at least three years prior to appointment to the Panel, an individual appointed to the Panel under paragraph (1) shall not have been an employee of the Federal Government.

(4) DATE OF APPOINTMENTS.—The appointment of a member of the Panel shall be made not later than—

(A) the date that is 120 days after the date of enactment of this Act; or

(B) in the case of a vacancy on the Panel described in subsection (c)(2), the date that is 120 days after the date on which the vacancy occurs.

(c) Term; Vacancies.—

(1) TERMS.—A member of the Panel shall be appointed for a term of 3 years, except that, with respect to the members first appointed under this section—

(A) the Chairperson shall be appointed for a term of 3 years;

(B) of the members appointed under subsection (b)(1)(B)—

(i) 1 member shall be appointed for a term of 1 year; and

(iii) 1 member shall be appointed for a term of 2 years;

(C) of the members appointed under subsection (b)(1)(C)—

(i) 1 member shall be appointed for a term of 1 year; and

(ii) 1 member shall be appointed for a term of 2 years.

(2) VACANCIES.—

(A) IN GENERAL.—A vacancy on the Panel shall be filled in the manner in which the original appointment was made and shall be subject to any conditions that applied with respect to the original appointment.

(B) FILLING UNEXPIRED TERM.—An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

(3) EXPIRATION OF TERMS.—The term of any member shall not expire before the date on which the successor of the member takes office.

(d) Removal. —A Member of the Panel may be removed from office by the Secretary of the Interior.

(e) Federal Advisory Committee Act. —The Panel shall not be subject to the requirements of the Federal Advisory Committee Act.

(f) Duties.

(1) Annual Assessment and Report on Agencies' Operational Decisions under this Act.—

(A) IN GENERAL.—No later than November 30, 2015, and annually no later than November 30 thereafter, the Panel shall report an assessment of the agencies' operational decisions under this Act and recommendations for the prospective implementation of this Act to the following Congressional committees:

(i) Senate Committee on Environment and Public Works;

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- (ii) Senate Appropriations Subcommittee on Energy and Water Development;
- (iii) House Natural Resources Committee; and
- (iv) House Appropriations Subcommittee on Energy and Water Development.

(B) RETROSPECTIVE ASSESSMENT.—In making the retrospective assessment under paragraph (1), the Panel shall review and evaluate the Director of the Fish and Wildlife Service, Administrator of NOAA Fisheries, and Commissioner of Reclamation's —

(i) decisions in implementing this Act and other Federal laws applicable to the operations of the Central Valley Project and the State Water Project;

(ii) compliance with the Endangered Species Act in relation to operations of the Central Valley Project and the State Water Project; and

(iii) efforts to minimize water supply disruptions while complying with the Endangered Species Act and this Act.

(C) PROSPECTIVE RECOMMENDATIONS.—The Panel shall make recommendations for prospective actions and potential actions warranting further study to better achieve the purposes of this Act and the Endangered Species Act as applied to the operations of the Central Valley Project and the State Water Project, including proposals—

(i) that in combination, both increase the survival of listed species and increase water supplies for the Central Valley Project and the State Water Project;

(ii) to increase the survival of listed fish species with little to no adverse effects on water supplies for the Central Valley Project and the State Water Project that would result from taking the specific proposed action recommended;

(iii) to increase such water supplies with little to no adverse effects on the survival of listed fish species; and

(iv) that respond to the annual Delta Science Program Independent Review Panel reports on the Long-term Operations Opinions.

(2) Five-Year Assessment on Effectiveness of Provisions of Act and Recommended Legislative Changes.

(A) IN GENERAL.—No later than five years after the date of enactment of this Act, and every five years thereafter, the Panel shall issue a report that

(i) evaluates the effectiveness of the provisions of this Act; and

(ii) makes legislative recommendations on:

(I) provisions of this Act that should be amended or repealed because they are not effective or for other reasons; and

(II) alternative legislation or modifications to this Act that could provide additional water supplies for the Central Valley Project and the State Water Project without reducing the survival of listed fish species.

(B) GOAL FOR RECOMMENDATIONS.—To the extent possible, the Panel shall submit legislative recommendations which in the aggregate would improve water supplies for the Central Valley Project and the State Water Project and increase the survival of listed



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fish species.

(C) REPORT TO CONGRESS.—The Panel shall submit its legislative recommendations to the Congressional committees listed in paragraph (1)(A).

(3) Submission of Comments and Proposals to Panel.—

(A) IN GENERAL.—In preparing the reports under paragraphs (1) and (2), the Panel shall invite comments and proposals from any interested person.

(B) SCHEDULE.—The Panel shall publish a schedule for receipt of comments and proposals under subparagraph (A), together with instructions for how to submit the comments and proposals.

(g) Cooperation and Assistance.—

(1) Upon request of the Panel Chairperson for information or assistance to facilitate the carrying out of this section, the Secretary of Commerce and the Secretary of the Interior shall promptly provide such information, unless otherwise prohibited by law.

(2) Space and Assistance.—The Secretary of the Interior shall provide the Panel with appropriate and adequate office space, together with such equipment, office supplies, and communications facilities and services as may be necessary for the operation of the Panel, and shall provide necessary maintenance services for such offices and the equipment and facilities located therein.

**SEC. 606. CONTINGENCY IN EVENT OF CONTINUING  
RESOLUTION FOR FISCAL YEAR 2015.**

The deadlines that apply to each respective Secretary, or agency, contained in sections 103(b), 103(d), 202, 204, and 205 shall be extended by the number of days that any resolution providing continuing appropriations for the Fish and Wildlife Service or NOAA Fisheries for fiscal year 2015 is in effect after January 1, 2015 if:

(1) such a resolution providing continuing appropriations for these agencies is enacted;

(2) the continuing resolution does not include funding for the agency actions prescribed in the sections of this Act specified above; and

(3) a funding shortfall remains for such agency actions after the Secretaries have consulted with the California Department of Water Resources, Central Valley Project and State Water Project contractors, and the Interagency Ecological Program.

**From:** Tom Birmingham  
**Sent:** Tuesday, October 7, 2014 2:43 PM  
**To:** Scott Petersen  
**Subject:** Fwd: Confidential draft water language  
**Attachments:** doc\_20141006143645.pdf; Untitled attachment 16157.htm

Sent from my iPhone

Begin forwarded message:

**From:** "Watts, John (Feinstein)" <[John\\_Watts@feinstein.senate.gov](mailto:John_Watts@feinstein.senate.gov)>  
**To:** "Tom Birmingham" <[tbirmingham@westlandswater.org](mailto:tbirmingham@westlandswater.org)>, "Bernhardt, David L." <[DBernhardt@BHFS.com](mailto:DBernhardt@BHFS.com)>  
**Subject:** FW: Confidential draft water language

Confidential, fyi. See attachment. As far as I can tell, this is just from Melissa.

From: Poole, Melissa [<mailto:MelissaP@paramountfarming.com>]  
Sent: Monday, October 06, 2014 5:42 PM  
To: Watts, John (Feinstein)  
Cc: Poole, Melissa  
Subject: RE: Confidential draft water language

Thanks, John.  
We really appreciate the Senator's and your continued work on this.

Attached are a few comments/questions.

Please call me to discuss at your convenience and let me know what we can do to help.

-Melissa

From: Watts, John (Feinstein) [[mailto:John\\_Watts@feinstein.senate.gov](mailto:John_Watts@feinstein.senate.gov)]  
Sent: Monday, October 06, 2014 8:58 AM  
To: Poole, Melissa  
Subject: Confidential draft water language

Dear Melissa,

Attached is confidential draft water language that reflects expert technical drafting assistance that we received from the Administration. I am meeting with House Republican staff to go over this draft language at 3 pm eastern time today. I am also sharing a copy of this language with Jim Beck and Brent Walthall.

PLEASE DO NOT SHARE THIS LANGUAGE WITH ANYONE. It is absolutely critical that this preliminary draft does not leak. The only other water districts that are familiar with it are Westlands and Metropolitan.

The attached draft language shows a few comment bubbles on factual issues the agencies are still checking, and comments on a few provisions where the agencies' expert technical drafting assistance is still in process.

Senator Feinstein is highly determined to get legislation enacted this year to provide real help with the drought and water supply shortages. We hope we can work with you to get this done.

Best,

John

202-████-████ direct

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Title: To provide drought relief in the State of California, and

Be it enacted by the Senate and House of Representatives of the State of California in Congress assembled,

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) Short Title.—This Act may be cited as the “California Drought Relief Act.”

(b) Table of Contents.—The table of contents of this Act shall be:

Sec.1.Short title; table of contents.

Sec.2.Findings.

Sec.3.Definitions.

**TITLE I—ADJUSTING DELTA SM  
BASED ON INCREASED REAL-TIME  
UPDATED SCIENCE**

Sec.101.Definitions.

Sec.102.Revise incidental take level calculation to reflect

Sec.103.Factoring increased real-time monitoring and management.

**TITLE II—ENSURING SALMONID  
RESPONSIVE TO NEW SCIENCE**

Sec.201.Definitions.

Sec.202.Required scientific studies.

Sec.203.Process for ensuring salmonid management is

Sec.204.Pilot program to protect native anadromous fish

Sec.205.CALFED invasive species pilot projects in the  
its tributaries.

Sec.206.Mark fishery and harvest management.

Sec.207.New actions to benefit Central Valley salmonid

**TITLE III—OPERATIONAL FLEXIBILITY  
RELIEF**

Sec.301.Findings.

Sec.302.Definitions.

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- 1 Sec.303.Operational flexibility in times of drought.
- 2 Sec.304.Operation of cross-channel gates.
- 3 Sec.305.Flexibility for export/inflow ratio.
- 4 Sec.306.Emergency environmental reviews.
- 5 Sec.307.Prioritizing State revolving funds during droughts.
- 6 Sec.308.Increased flexibility for regular project operations.
- 7 Sec.309.Temporary operational flexibility for first few storms of 2015 water year.
- 8 Sec.310.Expediting water transfers.
- 9 Sec.311.Warren Act contracts. [PLACEHOLDER]
- 10 Sec.312.Additional Warren Act contracts. [PLACEHOLDER]

11 **TITLE IV—INCREASING WATER STORAGE**

- 12 Sec.401.Findings.
- 13 Sec.402.Calfed storage feasibility studies.
- 14 Sec.403.Water storage project construction.
- 15 Sec.404.Other storage feasibility studies.
- 16 Sec.405.Dam safety projects with increased storage component.
- 17 Sec.406.Updating water operations manuals for non-Federal projects.
- 18 Sec.407.Central Valley Project.

19 **TITLE V—WATER RIGHTS PROTECTIONS**

- 20 Sec.501.Protections for State water project contractors.
- 21 Sec.502.Area of origin protections.
- 22 Sec.503.No redirected adverse impacts.
- 23 Sec.504.Effect on State laws.

24 **TITLE VI—MISCELLANEOUS**

- 25 Sec.601.Authorized service area.
- 26 Sec.602.Rescheduled water.
- 27 Sec.603.Fisheries disaster declaration. [PLACEHOLDER]
- 28 Sec.604.Oversight board for Restoration Fund.
- 29 Sec.605.Water operations review panel.
- 30 Sec.606.Contingency in event of continuing resolution for fiscal year 2015.

31

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1    **SEC. 2. FINDINGS.**

2    Congress finds that—

3        (1) As established in the Proclamation  
4        the State on January 17, 2014, that

5        (2) Extremely dry conditions  
6        conditions are likely to persist in

7        (3) As of September 2014, the  
8        likelihood of the State experiencing  
9        calendar year;

10       (4) The water supplies of the  
11       all major Central Valley Project  
12       September 25, 2014;

13       (5) The lack of precipitation that  
14       experienced in the State as of September

15       (6) According to a study released,  
16       drought has led to the following  
17       revenue, loss of \$203 million in  
18       pumping costs by \$454 million.  
19       billion, with over 17,000 seasons

20       (7) CVPIA Level II water deliveries  
21       north of Delta region, and by 35%

22       (8) Only one-sixth of the usual  
23       to a significant decline in habitat  
24       remaining wetlands due to overcropping

25       (9) The drought of 2013 through  
26       immediate and severe risks to human  
27       State;

28       (10) The serious emergency declaration

29            (A) immediate and credit  
30            of the State and the importance

31            (B) policies that do not prohibit  
32            only leads to costly litigation

33       (11) Federal law (including regulatory  
34       procedures and environmental and  
35       appropriate implementation of action  
36       emergency described in paragraph

37       (12) The serious emergency declaration  
38       necessary for the exercise of emergency  
39       requirements under—

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Water Plan:

(I) Urban supply reliability ranges between 90 and 100 percent, with a mean reliability across futures in the high 90<sup>th</sup> percentile; and

(II) Agricultural supply reliability ranges between 70 and 100 percent, with a mean reliability across futures in the mid-90<sup>th</sup> percentile.

(ii) For the Tulare Lake Hydrologic Region, as defined in the California Water Plan:

(I) Urban supply reliability ranges between 70 and 100 percent, with a mean reliability across futures in the mid-90<sup>th</sup> percentile; and

(II) Agricultural supply reliability ranges between 20 and 100 percent, with a mean reliability across futures in the low 70<sup>th</sup> percentile.

(16) Since the issuance of the biological opinions, recent studies have raised questions about the benefits to endangered salmonid populations from water pumping restrictions, including:

(A) Expert panel reviews have concluded that instantaneous water velocities in the tidal Delta affect juvenile salmonids, not “tidally average” flows, as previously assumed. Based on instantaneous water velocity modeling, water exports have a much smaller area of effect than was previously believed;

(B) Tagging studies conducted since 1993 (representing more than 28 million fish) demonstrate that the proportion of Sacramento Basin origin Chinook salmon entrained into the pumping facilities (including pre-screen losses) are on average less than 1/10 of 1%; and

(C) Telemetric studies of Sacramento Basin and San Joaquin Basin origin juvenile Chinook salmon have not demonstrated any significant adverse effect from water exports on fish survival.

(17) Data of pumping activities at the Central Valley Project and State Water Project delta pumps identifies that, on average from Water Year 2009 to Water Year 2014, pumping activity takes 893 delta smelt annually with an authorized take level of 5,003 delta smelt annually according to the biological opinion issued December 15, 2008.

(18) It is worth exploring whether there is a way to implement the biological opinions that would preserve the protections afforded listed fish and simultaneously increase water deliveries to the Central Valley Project and State Water Project without weakening environmental laws or protections.

(19) In 2014, better information exists than was known in 2008 concerning conditions and operations that may or may not lead to high salvage events that jeopardize the fish populations, and what alternative management actions can be taken to avoid jeopardy.

(20) Alternative management strategies, such as trapping and barging juvenile salmon through the Delta, removing non-native species, enhancing habitat, and monitoring fish movement and location in real-time can contribute significantly to protecting and recovering these endangered fish species, and at potentially lower costs to water supplies.

(21) Resolution of fundamental policy questions concerning the extent to which

Commented [A2]: Agencies are assessing this finding.

Smelt too



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application of the Endangered Species Act affects the operation of the Central Valley Project and State Water Project is the responsibility of Congress.

**SEC. 3. DEFINITIONS.**

In this Act:

(1) DELTA.—The term “Delta” means the Sacramento-San Joaquin Delta and the Suisun Marsh, as defined in sections 12220 and 29101 of the California Public Resources Code.

(2) Export Pumping Rates.—The term “export pumping rates” means the rates of pumping at the W.C. “Bill” Jones Pumping Plant and the Harvey O. Banks Pumping Plant, in the southern Delta.

(3) JEOPARDY.—The term “jeopardy” means to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.

(4) LISTED FISH SPECIES.—The term “listed fish species” means listed salmonid species and the Delta smelt.

(5) LISTED SALMONID SPECIES.—The term “listed salmonid species” means natural origin steelhead, natural origin genetic spring run Chinook, and genetic winter run Chinook salmon.

(6) OMR.—The term “OMR” means the Old and Middle River in the Delta.

(7) OMR FLOW OF -5000 CFS.—The term “OMR flow of -5000 cfs” means Old and Middle River flow of negative 5,000 cubic feet per second as measured by—

(A) the smelt biological opinion; and

(B) the salmonid biological opinion.

(8) SALMONID BIOLOGICAL OPINION.—The term “salmonid biological opinion” means the biological opinion issued by the National Marine Fisheries Service on June 4, 2009.

(9) SMELT BIOLOGICAL OPINION.—The term “smelt biological opinion” means the biological opinion on the Long-Term Operational Criteria and Plan for coordination of the Central Valley Project and State Water Project issued by the United States Fish and Wildlife Service on December 15, 2008.

(10) STATE.—The term “State” means the State of California.

**TITLE I—ADJUSTING DELTA SMELT MANAGEMENT  
BASED ON INCREASED REAL-TIME MONITORING AND  
UPDATED SCIENCE**

**SEC. 101. DEFINITIONS.**

*CONFIDE*

In this title:

(1) DIRECTC  
Wildlife Service

(2) DELTA S  
name *Hypome*

(3) SECRETARY

SEC. 102. RE  
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SEC. 103. FA  
MONITORIN  
SMELT MAN

(a) In General.—  
smelt biological opi  
consistent with curr  
shall be adjusted ac

(b) Increased Mo  
the Secretary shall c  
of the year based on  
interests.

(1) In implem

(A) use t  
to determin  
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rate; and

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(B) use results from appropriate survey smelt to determine how the Central Valley be operated more efficiently to minimize water export.

(2) During the period beginning on December and in each successive December through March, the Secretary shall ensure that smelt entering the Delta from the Sacramento River are not likely to raise turbidity levels in Old River not below 12 Nephelometric Turbidity Units (NTU). The Secretary shall—

(A) conduct daily monitoring using appropriate methods, including, but not limited to, the vicinity of Station 902, to determine whether that adult Delta smelt are moving with the current;

(B) use results from the monitoring survey, but not limited to, the vicinity of Station 902 to inform daily real-time Central Valley Project operations to minimize salvage while maximizing rate of water export;

(c) Periodic Review of Monitoring.—At least once every five years, the Secretary shall determine if it is appropriate, the Secretary shall—

(1) evaluate whether the monitoring program, compared to other monitoring programs for the Delta, is providing sufficient data to the Central Valley Project and State Water Project to maximize rates of water export; and

(2) determine whether the monitoring effort is sufficient in the long-term to provide more useful data.

(d) Delta Smelt Distribution Study.—

(1) IN GENERAL.—No later than January 1, 2015, the Secretary, in collaboration with Delta science agencies, shall develop a sampling and monitoring specifically designed to determine the distribution, and the types of habitat occupied by Delta smelt.

(2) SAMPLING.—The Delta smelt distribution study shall—

(A) include recording water quality and flow data;

(B) be designed to understand delta smelt distribution and movements throughout the Bay Delta;

(C) consider areas not routinely sampled, including wetland channels, near-shore channels, and shallow-water; and

(D) use the most biologically appropriate methods.

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gear suited to the type of sampling

(e) Scientifically supported implementation requirements.—In implementing the provisions of the predecessor biological opinion, on reverse flow shall—

(1) consider the relevant provisions of the biological opinion;

(2) manage reverse flow in Old and new biological opinion, or any successor biological opinion reductions for the Central Valley Project;

(3) document in writing any significant changes in the determinations of reverse OMR flow.

(A) whether targeted real-time monitoring section, including monitoring in the event of a significant increase in the salvage of fish;

(B) whether near-term forecast of prevailing conditions that OMR flow significantly increased take of debris.

(4) show in writing that any determination is less negative than -5000 cubic feet per second impact on the long-term survival of the species; data examined and the connection between the data and the consideration of the data.

(A) the findings in paragraph (3);

(B) whether continued project construction would exceed the incidental take limit;

(C) the potential effects of entrainment, including consideration of the discharge into the Delta,

(D) the water temperature,

(E) other factors relevant to the project;

(F) whether any alternative measures.

(5) for any subsequent biological opinion.

(4) for any determination to manage OMR flow the upper limit in the biological opinion.

(f) Memorandum of Understanding. No later than the date the Commissioner and the Director will execute

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ensure that the smelt biological opinion is implemented in a manner that minimizes water supply losses while complying with applicable laws and regulations. If that MOU alters any procedures set out in the biological opinion, there will be no need to reinitiate consultation if those changes do not have an adverse effect on listed species and the implementation of the MOU would not be a major change to implementation of the biological opinion. Any change to procedures that does not create a new adverse effect to listed species will not alter application of the take exemption in the incidental take statement in the biological opinion under the Endangered Species Act, section 7(o)(2).

**TITLE II—ENSURING SALMONID MANAGEMENT IS RESPONSIVE TO NEW SCIENCE**

**SEC. 201. DEFINITIONS.**

In this title:

(1) ASSISTANT ADMINISTRATOR.—The term “Assistant Administrator” means the Assistant Administrator of NOAA Fisheries.

(2) SECRETARY.—The term “Secretary” means the Secretary of Commerce.

**SEC. 202. REQUIRED SCIENTIFIC STUDIES.**

(a) Trap and Barge Pilot Project to Increase Survivals Through the Delta.—The Assistant Administrator and the Commissioner shall, in collaboration with the U.S. Fish and Wildlife Service, the California Department of Fish and Wildlife and other interested parties, design, permit, implement and evaluate a pilot program to test the efficacy of an experimental trap and barge program to improve survival of juvenile salmonids emigrating from the San Joaquin watershed through the Delta, as further described below.

(1) Within 30 days of enactment, the Assistant Administrator shall convene a working group of the relevant agencies and other interested parties through which to develop and execute a plan for the design, budgeting, implementation and evaluation of such a pilot program, utilizing existing expertise on such trap and barge programs as may be available. Such plan shall detail a schedule and budget for the program, and identify the responsible parties for each element of the program.

(2) The Assistant Administrator shall provide an opportunity for public review and comment on the pilot program and also simultaneously seek an expeditious independent peer review of the program to improve its rigor and likelihood of success.

(3) Upon completion of (2), above, the Assistant Administrator shall complete the necessary design and evaluations of the pilot program and seek such authorizations and permits as may be required for its prompt implementation and evaluation by the Assistant Administrator, the Commissioner or such other parties as they determine most suitable.

(4) Subject to the availability of funding, the Assistant Administrator and the Commissioner shall seek to commence implementation of the pilot program in 2015 or as

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soon thereafter as is possible, and shall conduct such pilot for such period of time as needed to evaluate the efficacy of the program to improve survivals across a range of environmental conditions.

(5) The Assistant Administrator and the Commissioner shall jointly report annually to the Senate Environment and Public Works Committee and the House Committee on Natural Resources their progress in implementing this section, estimated survival rates through the Delta for both juvenile salmonids that were barged through the Delta and those that were not barged, and if survival rates are significantly higher for barged fish as compared to other outmigrating smolts, the Assistant Administrator's and Commissioner's recommendations regarding broadening the pilot program and any relevant recommendations pursuant to section 203.

(b) Tagging studies.

(1) IN GENERAL.—The Assistant Administrator, in collaboration with other delta science partners, shall implement tagging studies, including acoustic telemetry and PIT tagging studies as appropriate, wherein habitat, predators, flow conditions, or other factors are experimentally altered and the behavior and survival of tagged juvenile salmonids are observed. Studies may also be conducted to aid in the understanding of Chinook salmon and steelhead abundance, distribution, and survival.

(2) SAMPLING.—The sampling—

(A) shall include recording water quality and tidal data;

(B) will be designed to aid in the understanding of salmonid abundance, distribution, and movements throughout the Bay Delta, including estimates of through Delta survival from Knights Landing or from Mossdale to Chipps Island; and

(C) will supplement, not supplant, ongoing acoustic tag and coded wire survival studies in the San Joaquin and Sacramento Rivers which the Assistant Administrator determines are crucial for trend monitoring.

**SEC. 203. PROCESS FOR ENSURING SALMONID MANAGEMENT IS RESPONSIVE TO NEW SCIENCE.**

(a) General directive. The reasonable and prudent alternative described in the salmonid biological opinion allows for and anticipates adjustments in operating criteria to reflect the best scientific and commercial data currently available, and authorizes efforts to test and evaluate improvements in operations that will meet applicable regulatory requirements and enable improvements in water supply reliability. The Commissioner and the Assistant Administrator are hereby directed to utilize these authorities fully as described below.

(b) Annual reviews of certain operating criteria. No later than December 31, 2015, and at least annually thereafter,

(1) The Commissioner, in consultation with and with the assistance of the Assistant Administrator shall commence annual efforts to examine and identify adjustments to the initiation of Action IV.2.3 pertaining to negative OMR flows, subject to paragraph (5).

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(2) The Commissioner, in Administrator, shall examine operational details relating to pertaining to the inflow to export

(3) Pursuant to the consultation of this subsection, the Commissioner on adjustments to the salmonid biological opinion and requirements of applicable law

(4) The Commissioner shall subsection (c) are met.

(5) The Assistant Administrator adjustments to water supply and biological opinion, applying to where there are references to

(c) Adjustments that shall be in subsection (b), the Assistant Administrator adjustments on listed species and

(1) the net effect on listed species into account whatever actions adjustments to mitigate its effects

(2) the effects of the adjustments

(d) Taking into account offsetting

(1) When examining opportunities operating criteria, the Commissioner the potential salmonid survival which, if implemented in conjunction of the adjustments. When consulted Assistant Administrator shall specific species and ensure the species in the aggregate, as long as consistent with the Endangered

(2) The offsetting measure substantial contribution from

(e) Framework for examining opportunities adjustments to operating criteria thereafter, the Assistant Administrator California Department of Fish and Game available and for each listed species Delta survival the Secretary shall

(1) with export restrictions flow to a fixed rate of 5000 cfs

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1 applicable, based on a given rate of San Joaquin River inflow to the Delta and  
2 relevant factors constant;

3 (2) with San Joaquin River inflow to export restrictions specified within A  
4 compared to the export restrictions in the April/May period imposed by the S  
5 Resources Control Board decision D-1641, based on a given rate of San Joa  
6 inflow to the Delta and holding other relevant factors constant;

7 (3) by a trap and barge program based on the experience of other systems  
8 they are comparable, and the study described in section 202, as that informati  
9 available;

10 (4) through physical habitat restoration improvements;

11 (5) through predation control programs;

12 (6) through temporary barriers, the Cross Channel Gates, and other project  
13 flow in the Delta;

14 (7) by salvaging fish that may be entrained near the entrance to Clifton Co  
15 and

16 (8) by any other management measures that may provide equivalent or bett  
17 listed species with improvements to water supplies.

18 (f) Survival estimates to be quantitative to the maximum extent feasible.

19 (1) The Assistant Administrator shall make these estimates and determinat  
20 quantitatively to the maximum extent feasible, such as a range of percentage i  
21 through-Delta survival that could result from the management measures, and i  
22 information is lacking for quantitative estimates, shall do so on qualitative ter  
23 the best available science.

24 (2) If the Assistant Administrator provides qualitative estimates of the bene  
25 species from one or more management measures, the Secretary shall, to the m  
26 extent feasible, rank the management measures described in subsection (e) in  
27 most likely expected contribution to increased through-Delta survival relative  
28 measures.

29 (3) If at the time the Assistant Administrator conducts the analysis under su  
30 the Secretary has not issued the estimates of increased through-Delta survival  
31 different management measures pursuant to subsection (e), the Secretary shall  
32 benefits to the species from different management measures based on the best  
33 commercial data available at the time.

34 (g) Comparison of adverse consequences for alternative management measures of  
35 to the salmon.—

36 (1) For the purposes of this subsection—

37 (A) The alternative management measure or combination of alternative  
38 measures identified in paragraph (2) shall be known as the “equivalent alt  
39 measure.”



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(B) The existing measure  
(D) shall be known as the “e

(C) An “equivalent increase  
species” shall mean an increase  
considering the change in the  
in the aggregate, and not need  
long as the change in survival  
Endangered Species Act and

(2) As part of the reviews of the  
Administrator shall determine whether  
combination of alternative management  
would provide an increase in through  
equivalent to the increase in through  
the following:

(A) with export restriction  
OMR flow to a fixed rate of  
IV.2.3 is applicable;

(B) with export restriction  
modification of Action IV.2  
that described in subparagraph

(C) with San Joaquin River  
IV.2.1, as compared to the delta  
State Water Resources Control

(D) with San Joaquin River  
IV.2.1, as compared to a minimum  
water supplies, other than the

(3) If the Assistant Administrator  
paragraph (2), the Assistant Administrator

(A) it is technically feasible  
equivalent alternative measure

(B) the adverse consequences  
the equivalent existing measure  
consequences to other affected

(4) If the Assistant Administrator  
Assistant Administrator and the California  
salmonid biological opinion pursuant to  
alternative measure in place of the  
supplies to the greatest extent possible  
equivalent through-Delta survival

(h) Tracking adverse effects beyond the  
opinion and coordinated operation

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(1) Among the adjustments to management process under this shall

(A) Evaluate the effects potential adjustment to oper

(B) Consider requiring t or IV.2.3 are imposed in an; the implementation of these additional adverse effects up analyzed and accounted for

(2) The Assistant Administrator State officials as appropriate, shall of OMR flows under the smelt and of opportunities to provide additional of the biological opinions.

(i) Real-Time Monitoring and Management shall, through the NMFS adaptive management analyze whether date-certain trigger second could be adjusted to instead analysis shows that the use of real-time improve water supply without causing salmon, then such real-time management

**SEC. 204. PILOT PROGRAM FOR ANADROMOUS FISH IN**

(a) Establishment of Non-native Predator Removal Program. The Administrator, in consultation with the California Department of Fish and Wildlife, shall develop a pilot program to remove predator fish removal program to remove bass, black bass, and other non-native fish from Stanislaus River, contingent upon funding

(1) be scientifically based;

(2) include methods to quantify year, the impact of such removal of such removal on the population: River and elsewhere by, among other fish that migrate past the rotary screen

(3) among other methods, use water boat electrofishing, which are among minimize effects to native anadromous

(4) be developed, including the species enhancement permits under

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(16 U.S.C.  
after the

(5) be  
of all nec  
begin the

(6) be

(b) Manag  
agreements w  
pilot program  
program, and  
management,  
program.

(c) Condu

(1) IN  
participa  
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NOAA F

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shall pay

(3) Ti  
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shall app

(d) Fundir

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each year  
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(2) A  
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(d)(1), or NOAA Fisheries otherwise scheduled. If the incurred by NOAA Fisheries deducted from the estimate NOAA Fisheries, if any, is

(e) Reporting and Evaluation

(1) IN GENERAL.—On or before the first business day of the month, the Assistant Administrator shall post on the website of the Department the report for the prior month.

(2) REPORT.—On or before the first business day of the month, the Assistant Administrator shall submit to the Administrator a report of the program, the Assistant Administrator shall review that—

(A) discusses the findings of the review;

(B) synthesizes the findings of the review;

(C) makes recommendations for improvement.

(f) Permits Process.—

(1) Not later than one year after the end of the fiscal year and the districts, the Secretary, in consultation with the appropriate, shall issue all permits under section 10(a)(1) of the Federal Water Pollution Control Act, as amended, for the performance of the pilot program.

(2) All permits issued shall be consistent with the requirements of the districts.

(3) Districts may delegate the authority to issue permits to a private contractor retained by the district.

(g) Emergency Environment. The Secretary shall establish a pilot program for the conservation of the environment. The Secretary shall consult with the Council on Environmental Quality, title 40, Code of Federal Regulations, and the appropriate arrangements to comply with the requirements of the pilot program.

(h) Definitions.—For the purposes of this section, the following definitions shall apply:

(1) COMMISSIONER.—The Commissioner of the Department of Reclamation.

(2) DISTRICTS.—The term "districts" means the San Joaquin Irrigation District and the Central Valley Irrigation District.

(3) PILOT PROGRAM.—The term "pilot program" means the program established under this section.

(i) Sunset.—The authorities for the pilot program shall expire on the date of implementation of the pilot program.

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SEC. 205. CALFED  
IN THE SACRAMENTO  
ITS TRIBUTARIES

(a) FINDINGS.—Congress fi

(1) The Sacramento-Sa

(A) is one of the la

(B) is a natural tre

(C) has native bio  
California, including  
environment and fis

(D) has river tribu  
experience a high le

(2) Past, present and fu  
factor in the decline of na  
the Sacramento–San Joaq

(3) More than 250 noni  
Delta and its tributaries; o  
altered the Sacramento–Sa

(4) The Bay Delta Con  
Significant Units of Sacra  
Spring-run Chinook Salm  
Steelhead, the Recovery F  
multiple 5 year reviews o  
species are a significant fi  
which include invasive ad  
cause biological stress for  
the Sacramento–San Joaq

(5) If threats by nonnat  
probability that native spe  
pelagic and anadromous c

(6) The CALFED legis  
control, and eradicate inv

(7) A focused pilot pro  
to reduce threats to native  
on native listed species w  
the impact on downstream

(b) PILOT PROJECTS TO IMPL

(1) Not later than Janu  
Secretary of Commerce a

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shall begin pilot projects to implement the invasive species program, including prevention, control and eradication authorized pursuant to Section 103(d)(6)(A)(iv) of Public Law 108-361. The pilot projects shall:

(A) seek to reduce invasive aquatic vegetation, predators, and other competitors which are major factors in the decline of native listed pelagic and anadromous species that occupy the Sacramento and San Joaquin Rivers and their tributaries and the Sacramento-San Joaquin Bay-Delta; and

(B) address how to remove, reduce, or control the effects of species including: Asiatic clams, silversides, gobies, Brazilian water weed, largemouth bass, smallmouth bass, striped bass, crappie, bluegill, white and channel catfish, and brown bullheads.

(2) The Secretary of the Interior's efforts shall consist of the following phases:

(A) Phase 1. The Secretary of the Interior shall convene a panel of experts, including experts recommended by the State of California, to:

- (i) Identify the non-native species having the greatest impact on the viability of native pelagic and anadromous native listed species; and
- (ii) Identify the non-native species for which actions to reduce or control the population is determined to be possible; and
- (iii) Design a study to reduce the non-native species identified in clauses (i) and (ii) and prepare a cost estimate to implement this study.

(B) Phase 2. The Secretary of the Interior shall test the general viability of nonnative reduction methods, including either direct predator removal or alteration of channel conditions, or some combination thereof, through pilot projects at multiple sites in addition to the projects on the Stanislaus River pursuant to Section 204, including known hotspots of predator aggregation or activity, such as:

- (i) Clifton Court Forebay,
- (ii) Central Valley Project intakes,
- (iii) Head of Old River,
- (iv) Georgiana Slough,
- (v) Old and Middle Rivers,
- (vi) Franks Tract,
- (vii) Paintersville Bridge,
- (viii) individual river tributaries important for wild populations of anadromous species listed as threatened or endangered under the Endangered Species Act of 1973,
- (ix) Human-made submerged structures, and
- (x) Salvage release sites.

(C) Phase 3. If it is feasible to do so, the Secretary of the Interior shall implement nonnative reduction methods at a larger number of sites, incorporating information learned during the first and second phase.

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(3) The Secretary of the projects above, and

(A) pelagic and Endangered Spec

(B) water quality

(C) water supply

(4) After assessing the collaboration with the S of Fish and Wildlife, sh and prudent alternative biological opinion, or o the Central Valley Proj fishery, water quality, a

(c) IMPLEMENTATION. Th described in subpart (b) for implementation.

(d) REPORTING REQUIRE Senate Committee on Envir Resources on the following:

(1) No later than Jan including the applicatio permits under section 1 1539(a)(1)), and for the

(2) Upon the comple describing its implement

(3) Two years after t of the nonnative specie how such efforts have b Anadromous and Pelag the associated cost effe

(4) After the pilot pr including recommendat may be taken to full sce for the Central Valley b Act of 1973 (16 U.S.C.

(e) EMERGENCY ENVIRON program for the conservatio shall consult with the Coun title 40, Code of Federal Re arrangements to comply wit

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1 SEC. 206. N  
2 MANAGEN

3 To minimize th  
4 of stocks of endan  
5 hatchery and natu  
6 the Endangered S

7 (1) in part  
8 persons resp  
9 panel within  
10 Scientific Re  
11 benefits assoc  
12 way marking  
13 Administrator

14 (A) In  
15 appoint  
16 selected

17 (B) C  
18 manage

19 (C) C

20 (2) assess  
21 better protecti  
22 Chinook.

23 SEC. 207. N  
24 VALLEY S.

25 Not later than M  
26 Fish and Wildlife  
27 collaboration with  
28 Commissioner of t  
29 otherwise facilitate

30 (1) to prote  
31 hatchery origi

32 (2) to prev  
33 grounds wher  
34 the Endanger



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TITLE III—OP  
RELIEF

SEC. 301. FINI

Congress finds that—

(1) Based on the  
necessary for fede  
them under the ap  
while providing th

SEC. 302. DEF

In this title:

(1) CENTRAL VA  
given the term in s  
102–575; 106 Stat

(2) KLAMATH PI  
project in the State  
(32 Stat. 388, chap

(3) RECLAMATI  
constructed pursua  
wholly or partially

(4) SECRETARIE

(A) the Ad

(B) the Sec

(C) the Sec

(D) the Sec

(5) STATE WATE  
described by Calif  
Department of Wa

SEC. 303. OPE  
DROUGHT.

(a) Water Supplies.—

(1) IN GENERAL  
Governor of Calif  
effect, the Secreta  
Central Valley Pro  
repayment contrad  
municipality in the

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(D) prov

urban wate

(c) Accelerated Pr

(1) IN GENER

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(2) REQUEST

(A) IN C

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conditions

(B) MEI

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(3) NOTIFICA

Secretary of the

request, includi

(4) DECISION

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the project, sub

(5) MEETING

final project de

Secretary, rega

(d) Application.—

Secretaries, has a ro

shall apply to those

(e) Limitation.—I

approve projects—

(1) that woul

(2) without f

(f) 2015 Drought

appropriate State of

with the provisions

water supplies that c

CONFIDENTIAL DRAFT

1 SEC. 304. OPERATION

2 (a) In General.—The Secretary of C

3 (1) authorize and implement a  
4 remain open to the maximum ext  
5 Geological Survey on diurnal bel  
6 flood tide period and provide wa  
7 drought emergency declaration o  
8 monitoring criteria developed pu  
9 Change in License and Permit Te  
10 State Water Resources Control B  
11 other authorizations associated w

12 (2) with respect to the operatio  
13 (1), collect data on the impact of

14 (A) species listed as threa  
15 1973 (16 U.S.C. 1531 et seq

16 (B) water quality; and

17 (C) water supply;

18 (3) consistent with knowledge  
19 with the California Department o  
20 Georgiana Slough in coordination  
21 protect migrating salmonids;

22 (4) evaluate the combined salm  
23 paragraphs (1) through (3) in deci  
24 enhance salmonid survival and w

25 (5) not later than May 15, 2015  
26 Resources of the Senate and the C  
27 Representatives a written report o

28 (b) Recommendations.—After asses  
29 Secretary of the Interior shall recomme  
30 Gates, to the Central Valley Project, ar  
31 reasonable and prudent alternative con  
32 Marine Fisheries Service on June 4, 20  
33 water supply benefits. The Secretary s  
34 Control Board to seek consistent direct  
35 under federal and state law, including V

36 SEC. 305. FLEXIBILITY

37 In response to the declaration of a st  
38 and for the period of time such a droug  
39 Bureau of Reclamation shall continue t  
40 ratio pursuant to the California State W

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(1) to the maximum extent practicable, avoid causing land subsidence or violating

(A) help meet the contract water requirements through the improvement or installation of conveyance facilities, and well as those activities may only be authorized under the Water Assistance Program or the National Water Interior; and

(B) make available to Central Valley Project surface water obtained

(2) contingent upon funding, in coordination with an agreement with the National Academy of Sciences, be completed not later than 1 year after the effectiveness and environmental impact of the water supplies and improving riparian habitat in tributaries, in the State and elsewhere;

(3) in coordination with the California Department of Fish and Wildlife, improve habitat upstream Sacramento River and San Joaquin River as threatened or endangered under the Endangered Species Act (96 Stat. 1332, 1661, 1666, 1669, 1671, 1674, 1676, 1678, 1680, 1682, 1684, 1686, 1688, 1690, 1692, 1694, 1696, 1698, 1700, 1702, 1704, 1706, 1708, 1710, 1712, 1714, 1716, 1718, 1720, 1722, 1724, 1726, 1728, 1730, 1732, 1734, 1736, 1738, 1740, 1742, 1744, 1746, 1748, 1750, 1752, 1754, 1756, 1758, 1760, 1762, 1764, 1766, 1768, 1770, 1772, 1774, 1776, 1778, 1780, 1782, 1784, 1786, 1788, 1790, 1792, 1794, 1796, 1798, 1800, 1802, 1804, 1806, 1808, 1810, 1812, 1814, 1816, 1818, 1820, 1822, 1824, 1826, 1828, 1830, 1832, 1834, 1836, 1838, 1840, 1842, 1844, 1846, 1848, 1850, 1852, 1854, 1856, 1858, 1860, 1862, 1864, 1866, 1868, 1870, 1872, 1874, 1876, 1878, 1880, 1882, 1884, 1886, 1888, 1890, 1892, 1894, 1896, 1898, 1900, 1902, 1904, 1906, 1908, 1910, 1912, 1914, 1916, 1918, 1920, 1922, 1924, 1926, 1928, 1930, 1932, 1934, 1936, 1938, 1940, 1942, 1944, 1946, 1948, 1950, 1952, 1954, 1956, 1958, 1960, 1962, 1964, 1966, 1968, 1970, 1972, 1974, 1976, 1978, 1980, 1982, 1984, 1986, 1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010, 2012, 2014, 2016, 2018, 2020, 2022, 2024, 2026, 2028, 2030, 2032, 2034, 2036, 2038, 2040, 2042, 2044, 2046, 2048, 2050, 2052, 2054, 2056, 2058, 2060, 2062, 2064, 2066, 2068, 2070, 2072, 2074, 2076, 2078, 2080, 2082, 2084, 2086, 2088, 2090, 2092, 2094, 2096, 2098, 2100, 2102, 2104, 2106, 2108, 2110, 2112, 2114, 2116, 2118, 2120, 2122, 2124, 2126, 2128, 2130, 2132, 2134, 2136, 2138, 2140, 2142, 2144, 2146, 2148, 2150, 2152, 2154, 2156, 2158, 2160, 2162, 2164, 2166, 2168, 2170, 2172, 2174, 2176, 2178, 2180, 2182, 2184, 2186, 2188, 2190, 2192, 2194, 2196, 2198, 2200, 2202, 2204, 2206, 2208, 2210, 2212, 2214, 2216, 2218, 2220, 2222, 2224, 2226, 2228, 2230, 2232, 2234, 2236, 2238, 2240, 2242, 2244, 2246, 2248, 2250, 2252, 2254, 2256, 2258, 2260, 2262, 2264, 2266, 2268, 2270, 2272, 2274, 2276, 2278, 2280, 2282, 2284, 2286, 2288, 2290, 2292, 2294, 2296, 2298, 2300, 2302, 2304, 2306, 2308, 2310, 2312, 2314, 2316, 2318, 2320, 2322, 2324, 2326, 2328, 2330, 2332, 2334, 2336, 2338, 2340, 2342, 2344, 2346, 2348, 2350, 2352, 2354, 2356, 2358, 2360, 2362, 2364, 2366, 2368, 2370, 2372, 2374, 2376, 2378, 2380, 2382, 2384, 2386, 2388, 2390, 2392, 2394, 2396, 2398, 2400, 2402, 2404, 2406, 2408, 2410, 2412, 2414, 2416, 2418, 2420, 2422, 2424, 2426, 2428, 2430, 2432, 2434, 2436, 2438, 2440, 2442, 2444, 2446, 2448, 2450, 2452, 2454, 2456, 2458, 2460, 2462, 2464, 2466, 2468, 2470, 2472, 2474, 2476, 2478, 2480, 2482, 2484, 2486, 2488, 2490, 2492, 2494, 2496, 2498, 2500, 2502, 2504, 2506, 2508, 2510, 2512, 2514, 2516, 2518, 2520, 2522, 2524, 2526, 2528, 2530, 2532, 2534, 2536, 2538, 2540, 2542, 2544, 2546, 2548, 2550, 2552, 2554, 2556, 2558, 2560, 2562, 2564, 2566, 2568, 2570, 2572, 2574, 2576, 2578, 2580, 2582, 2584, 2586, 2588, 2590, 2592, 2594, 2596, 2598, 2600, 2602, 2604, 2606, 2608, 2610, 2612, 2614, 2616, 2618, 2620, 2622, 2624, 2626, 2628, 2630, 2632, 2634, 2636, 2638, 2640, 2642, 2644, 2646, 2648, 2650, 2652, 2654, 2656, 2658, 2660, 2662, 2664, 2666, 2668, 2670, 2672, 2674, 2676, 2678, 2680, 2682, 2684, 2686, 2688, 2690, 2692, 2694, 2696, 2698, 2700, 2702, 2704, 2706, 2708, 2710, 2712, 2714, 2716, 2718, 2720, 2722, 2724, 2726, 2728, 2730, 2732, 2734, 2736, 2738, 2740, 2742, 2744, 2746, 2748, 2750, 2752, 2754, 2756, 2758, 2760, 2762, 2764, 2766, 2768, 2770, 2772, 2774, 2776, 2778, 2780, 2782, 2784, 2786, 2788, 2790, 2792, 2794, 2796, 2798, 2800, 2802, 2804, 2806, 2808, 2810, 2812, 2814, 2816, 2818, 2820, 2822, 2824, 2826, 2828, 2830, 2832, 2834, 2836, 2838, 2840, 2842, 2844, 2846, 2848, 2850, 2852, 2854, 2856, 2858, 2860, 2862, 2864, 2866, 2868, 2870, 2872, 2874, 2876, 2878, 2880, 2882, 2884, 2886, 2888, 2890, 2892, 2894, 2896, 2898, 2900, 2902, 2904, 2906, 2908, 2910, 2912, 2914, 2916, 2918, 2920, 2922, 2924, 2926, 2928, 2930, 2932, 2934, 2936, 2938, 2940, 2942, 2944, 2946, 2948, 2950, 2952, 2954, 2956, 2958, 2960, 2962, 2964, 2966, 2968, 2970, 2972, 2974, 2976, 2978, 2980, 2982, 2984, 2986, 2988, 2990, 2992, 2994, 2996, 2998, 3000, 3002, 3004, 3006, 3008, 3010, 3012, 3014, 3016, 3018, 3020, 3022, 3024, 3026, 3028, 3030, 3032, 3034, 3036, 3038, 3040, 3042, 3044, 3046, 3048, 3050, 3052, 3054, 3056, 3058, 3060, 3062, 3064, 3066, 3068, 3070, 3072, 3074, 3076, 3078, 3080, 3082, 3084, 3086, 3088, 3090, 3092, 3094, 3096, 3098, 3100, 3102, 3104, 3106, 3108, 3110, 3112, 3114, 3116, 3118, 3120, 3122, 3124, 3126, 3128, 3130, 3132, 3134, 3136, 3138, 3140, 3142, 3144, 3146, 3148, 3150, 3152, 3154, 3156, 3158, 3160, 3162, 3164, 3166, 3168, 3170, 3172, 3174, 3176, 3178, 3180, 3182, 3184, 3186, 3188, 3190, 3192, 3194, 3196, 3198, 3200, 3202, 3204, 3206, 3208, 3210, 3212, 3214, 3216, 3218, 3220, 3222, 3224, 3226, 3228, 3230, 3232, 3234, 3236, 3238, 3240, 3242, 3244, 3246, 3248, 3250, 3252, 3254, 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SEC. 309. TEMPORARY OPERATIONAL FLEXIBILITY FOR FIRST FEW STORMS OF SEASON

(a) Findings:

(1) During the 2014 water year, operation of the State Water Project, the incidental take of adult I (7.7% of the incidental take limit); of winter steelhead (7.7% of the incidental take limit); of spring run chinook, zero; and of steelhead, zero.

(2) The Central Valley Project and State Water Project caused a peak flow of -5,000 cubic feet per second over a storm event in February and March 2014, which caused substantially increased take of smelt and steelhead.

(3) Hydrological conditions in dry years and water pumping restrictions pursuant to the Central Valley Project.

(4) The Secretaries should be allowed to operate the State Water Project causing significant risk to the listed species.

(5) Given California's severe drought conditions for irrigation due to lack of surface water storage reservoirs, it is imperative that the Secretaries capture the maximum amount of storm flow and provide for the diversion of those supplies to the State Water Project so that farms, businesses, and homes have the opportunity to bolster their meager supplies.

(b) In general. Consistent with avoiding additional take beyond the range of those authorized under the ESA, the Secretaries, through the State Water Project, combined, to operate at up to -7500 cubic feet per second (based on Upper and Middle Rivers) daily average for up to 21 consecutive days as described in subsection (c).

(c) Days of temporary operational flexibility. The Secretaries in subsection (b) shall be authorized on days that the Secretaries determine the daily average river flow of the Sacramento River is less than 10,000 cubic feet per second as measured at the Sacramento River at the States Geologic Survey.

(d) Compliance with ESA authorizations. In exercising the temporary operational flexibility as they determine, the Secretaries shall continue to impose any requirements under the ESA to avoid adverse effects on listed fish species beyond the requirements of the Species Act.

(e) Other environmental protections.

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(1) The Secretaries' actions under this section shall be con  
regulatory requirements under state law, including State Wat  
Decision 1641, as it may be implemented in any given year;

(2) During the first flush of sediment out the Delta during  
flow may be managed at rates less negative than -5000 cubic  
duration to avoid movement of adult delta smelt (*Hypomesus*  
southern Delta that would be likely to increase entrainment at  
State Water Project pumping plants;

(3) This section shall not have any effect on the applicable  
biological opinion from April 1 to May 31, unless the Secreta  
some or all of such applicable requirements may be adjusted  
provide emergency water supply relief without resulting in ac  
beyond those authorized under the Endangered Species Act.

(4) During operations under this section, the Commissione  
coordination with the Fish and Wildlife Service, National Ma  
California Department of Fish and Wildlife, shall undertake a  
data gathering to insure take limits levels are not exceeded, ar  
negative impacts and actions necessary to mitigate any impac  
flexibility to species listed as threatened or endangered under  
16 U.S.C. 1531-1544; and

(5) The Commissioner is authorized to take any action, inc  
appropriated funds between accounts that, in the Commission  
mitigate the impacts of such operations as long as any such m  
requirements of this section.

(f) Technical adjustments to target period. If, before temporary  
been implemented on 21 cumulative days, the Secretaries operate  
the State Water Project combined at levels that result in Old and M  
negative than -7500 cubic feet per second during days of temporar  
defined in subsection (c), the duration of such operation shall not b  
cumulative days specified in subsection (b).

(g) Emergency consultation; effect on running averages.

(1) If necessary to implement the provisions of this section,  
the emergency consultation procedures under the Endangered  
implementing regulation at 50 CFR 402.05 to temporarily adj  
the biological opinions, solely for the 21 days of temporary op

(A) no more than necessary to achieve the purposes of  
the environmental protections in subsections (d) and (e);

(B) including, as appropriate, adjustments to ensure th  
the periods of temporary operational flexibility do not cc  
day running averages of tidally filtered daily Old and Mi  
under the biological opinions.



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1 (2) Follow  
2 Commission  
3 listed fish  
4 authorized

5 (h) Level of  
6 section, the Secretary  
7 provide a great  
8 short time frame  
9 Delta.

10 (i) Duration.

11 **SEC. 310**

12 (a) In General  
13 102-575; 106

14 (1) by the  
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to be complete.”; and

(6) in paragraph (6) (as so designated), by striking “3405(a)(1)(A)-(C), (E), (G), (H), (I), (L), and (M) of this title” and inserting “(A) through (C), (E), (G), (H), (I), (L), and (M) of paragraph (4)”.

(b) Conforming Amendments.—The Central Valley Project Improvement Act (Public Law 102–575) is amended—

(1) in section 3407(c)(1) (106 Stat. 4726), by striking “3405(a)(1)(C)” and inserting “3405(a)(4)(C)”; and

(2) in section 3408(i)(1) (106 Stat. 4729), by striking “3405(a)(1) (A) and (J) of this title” and inserting “subparagraphs (A) and (J) of section 3405(a)(4)”

**SEC. 311. WARREN ACT CONTRACTS.**

[To be supplied.]

**SEC. 312. ADDITIONAL WARREN ACT CONTRACTS.**

[To be supplied.]

**TITLE IV—INCREASING WATER STORAGE**

**SEC. 401. FINDINGS.**

Congress finds that—

(1) the record drought conditions being experienced in the State as of the date of enactment of this Act are—

(A) expected to recur in the future; and

(B) likely to do so with increasing frequency;

(2) water storage is an indispensable and integral part of any solution to address the long-term water challenges of the State;

(3) Congress authorized relevant feasibility studies for 4 water storage projects in the State, including projects for—

(A) enlargement of Shasta Dam in Shasta County under section 2(a) of Public Law 96–375 (94 Stat. 1506), as reaffirmed under section 103(d)(1)(A)(i)(I) of Public Law 108–361 (118 Stat. 1684);

(B) enlargement of Los Vaqueros Reservoir in Contra Costa County under section 215 of Public Law 108–7 (117 Stat. 147), as reaffirmed under section 103(d)(1)(A)(i)(II) of Public Law 108–361 (118 Stat. 1684);

(C) construction of North-of-Delta Offstream Storage (Sites Reservoir) in Colusa County under section 215 of Public Law 108–7 (117 Stat. 147), as reaffirmed under section 103(d)(1)(A)(ii)(I) of Public Law 108–361 (118 Stat. 1684); and

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(c) Accountability.—

(1) If the Bureau of Reclamation determines that an environmental impact statement for the water storage projects referenced in of Section 103(d)(1) of P.L. 101-508 is not completed according to the schedule specified in subsection (a), the Bureau shall refer the matter to the Senate Committee on Energy and Natural Resources, the Senate Appropriations Committee on Energy and Water Development, and the House of Representatives Committee on Infrastructure Committee within 14 days of the determination. The notice shall include:

(A) An explanation of the delay;

(B) The anticipated length of the delay and the revised completion date;

(C) The steps that the Bureau will take to mitigate the delay, including, but not limited to, a request to reprogram existing funds appropriate to the revised completion deadline.

(2) The Bureau of Reclamation shall carry out the procedures in subsection (c) to avoid any subsequent delay beyond the revised completion deadline.

**SEC. 403. WATER STORAGE PROJECT COOPERATION**

(a) The Secretary, acting through the Commissioner of the Bureau of Reclamation, shall partner or enter into an agreement on the water storage projects identified in the Water Supply Reliability and Environmental Improvement Act (Public Law 101-508, Acts supplemental and amendatory to the Act) with local joint powers authorities pursuant to State law by irrigation districts and other local water districts within the applicable hydrologic region, to advance those projects.

(b) [PLACEHOLDER FOR AUTHORIZATION ISSUE]

**SEC. 404. OTHER STORAGE FEASIBILITY STUDIES**

(a) Definition of Qualifying Project.—In this section, the term “qualifying project” means a surface water storage project constructed on lands administered by the Bureau of Reclamation in a State in which the Bureau of Reclamation has jurisdiction, including easement, right-of-way, lease, or any private holding.

(b) Lead Agency.—

(1) QUALIFYING PROJECTS WITHIN JURISDICTION OF BUREAU OF RECLAMATION.—The Bureau of Reclamation shall serve as the lead agency for purposes of conducting reviews, analyses, opinions, statements, permits, licenses, and other actions required under Federal law (including regulations) to construct or reconstruct a project within the jurisdiction of the Bureau.

(2) QUALIFYING PROJECTS OUTSIDE JURISDICTION OF BUREAU OF RECLAMATION.—If the site of a qualifying project is not located in a State in which the Bureau of Reclamation has jurisdiction, the Secretary shall, by not later than 45 days after the date of application for the qualifying project—

(A) designate an alternate agency within the Department of the Interior as the lead agency for purposes of coordinating all reviews, analyses, and

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- (A) requirements;
- (B) review processes; and
- (C) stakeholder responsibilities.

(2) SCHEDULE.—

(A) ESTABLISHMENT.—Not later than 30 days after paragraph (1), the lead agency, in consultation with the relevant agencies, shall establish a schedule for completion of the qualifying project, taking into account—

- (i) the responsibilities of cooperating agencies and the relevant regulations;
- (ii) the resources available to the cooperating agencies and stakeholders;
- (iii) the overall size and complexity of the project;
- (iv) the overall schedule for, and cost of, the project;
- (v) the sensitivity of the natural and historic resources to the qualifying project.

(B) REQUIREMENTS.—On establishment of a schedule under subparagraph (A), the lead and cooperating agencies shall—

- (i) to the maximum extent practicable, adhere to the schedule;
- (ii) submit to the Committee on Environment and the Committee on Natural Resources of the House of Representatives on a semiannual basis a report describing any delay in the project and a description of—
  - (I) the reasons for the delay;
  - (II) the actions that the lead and cooperating agencies will take to minimize the delay; and
  - (III) a revised schedule for the qualifying project.

(e) Environmental Reviews.—

(1) SINGLE, UNIFIED ENVIRONMENTAL REVIEW DOCUMENT.—

(A) IN GENERAL.—The lead agency with respect to the project shall consult with appropriate stakeholders and cooperating agencies to determine whether a single, unified environmental review document for the project is sufficient to comply with applicable Federal law, including the National Environmental Policy Act of 1969.

(B) ACTION ON DECLINATION.—If, after consultation with the relevant agencies, the lead agency determines not to adopt a single, unified environmental review document relating to a qualifying project—

- (i) the lead agency shall—

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3 (5) REQUIREMENTS.—On c  
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5 (A) make available to  
6 regarding—

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8 the qualifying proje

9 (ii) the general lo

10 (B) identify any issues  
11 socioeconomic effects of  
12 substantially delay or pre  
13 is needed for a study rela

14 (f) Concurrent Review Actions.—

15 (1) IN GENERAL.—Any revi  
16 qualifying project made by a l

17 (A) conducted, to the r  
18 applicable government ag

19 (B) incorporated in the

20 (2) REQUIREMENT.—The le  
21 formulate and implement adm  
22 adherence to the schedule for  
23 environmentally responsible n

24 (3) GUIDANCE.—The Secret  
25 approaches to carry out the en  
26 practicable—

27 (A) eliminates repetitiv

28 (B) focuses on the actu

29 (C) establishes a forma  
30 agencies, including the es  
31 environmental review pro

32 (D) complies with the l  
33 et seq.) and all other appl

34 (g) Administrative Record and D

35 (1) IN GENERAL.—The lead

36 (A) be responsible for c  
37 as the basis for decisions

38 (B) to the maximum ex



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available all data  
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(2) REPORTS.—No  
progress report regarding  
the Committee on Energy and  
Natural Resources of

(h) Participation by Non-Federal

(1) APPLICATION.—The  
qualifying project must be  
agency of the qualifying  
to the qualifying project

(A) the non-Federal  
in which the agency

(B) the non-Federal

(i) all relevant  
qualifying project

(ii) all data  
other stakeholders

(C) the application  
will not be inappropriate

(2) FUNDS.—Any

(A) may be allocated  
subject to the conditions

(i) review

(ii) certification

(I) a

(II)

qualifying

(B) shall be a

(i) Applicability to California  
401(3), this section shall apply  
date of enactment of this Act  
project for construction.

**SEC. 405. DAM  
STORAGE COMMISSION**

(a) Additional Project E

(1) in section 3 (4)

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Reservoir

SEC. 406. UPDATES  
FOR NON-FEDERAL

(a) Definitions.—In this section

(1) NON-FEDERAL PROJECT—

(A) IN GENERAL.—A project operated for  
project operated for  
pursuant to section  
“Flood Control Act

(B) EXCLUSION.—A  
reservoir owned by

(i) the Bureau

(ii) the Corps

(2) OWNER.—The term

(A) the Secretary

(B) the Secretary

(C) the head of a  
Federal monetary corporation  
Federal project, if the project  
benefit.

(3) SECRETARY.—The

(b) Review by Secretary.—

(1) IN GENERAL.—No  
owner of a non-Federal  
the water control manual  
modifications proposed  
and run-off forecasting  
project.

(2) REPORT.—Not later than  
paragraph (1), the Secretary  
a report describing the results

(3) PRIORITY.—In carrying out  
review and revision of water control  
Federal project—

(A) that is located in  
the 1-year period ending

(B) the owner of the project  
revise the operation

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proposed project modifications or operational changes;

(C) the water control manual and hydrometeorological information establishing the flood control rule curves of which have not been revised during the 20-year period ending on the date of review by the Secretary;

(D) with respect to which a completed probable maximum flood analysis or other data indicates that revisions of the project control manual or rule curves are likely to enhance water supply benefits and flood control operations; and

(E) modifications or operational changes proposed by the owner of which are likely to enhance water supply benefits and flood control operations.

(4) NON-FEDERAL CONTRIBUTIONS.—The Secretary may accept non-Federal funds for all or a portion of the cost of carrying out a review or revision of water control manuals and rule curves for non-Federal projects under this subsection.

## SEC. 407. CENTRAL VALLEY PROJECT.

### (a) Cooperative Agreements.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, to determine the feasibility of an agreement for long-term use of an existing or expanded non-Federal storage or conveyance facility to augment Federal water supply, ecosystem, and operational flexibility benefits, the Secretary shall offer to enter into cooperative agreements with non-Federal entities to provide replacement water supplies for drought relief for—

(A) contractors of the Central Valley Project (as defined in section 3403 of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706));

(B) units of the National Wildlife Refuge System;

(C) State wildlife areas; and

(D) private wetland areas.

### (2) REQUIREMENTS.—A cooperative agreement under this subsection shall—

(A) include the purchase of storage capacity in non-Federal facilities from willing sellers; and

(B) provide reimbursement for the temporary use of available capacity in existing above-ground, off-stream storage and associated conveyance facilities owned by local water agencies.

(b) Report.—Not later than 2 years after the date of enactment of this Act, the Secretary shall submit to the Chief of the National Wildlife Refuge System and contractors of the Central Valley Project a report describing the feasibility of the agreement for long-term use described in subsection (a)(1).

## TITLE V—WATER RIGHTS PROTECTIONS

## SEC. 501. PROTECTIONS FOR STATE WATER PROJECT

**Commented [A ]:** The agencies have not had a chance to fully analyze this Title. We expect the House to provide further suggestions, and we will seek the agencies' technical feedback on the entire title with the House's suggestions included.

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1 CONTRACT

2 If, as a result of the

3 (a) revokes the contract  
4 2080.1;

5 (b) amends or issues  
6 Code section 2080.1 in  
7 as compared with the  
8 Salmonid Biological

9 (c) requires take in a  
10 manner that results in  
11 water supply available

12 then, the water supply  
13 Wildlife accruing to the  
14 Water Project.

15 SEC. 502. AR

16 (a) The Secretary of  
17 Project (CVP) to adhere  
18 honoring water rights  
19 regardless of the source  
20 December 19, 1914, and  
21 pursuant to California  
22 1215 of Chapter 1 of  
23 and 11463, and Section

24 (b) Any action that  
25 from any CVP water  
26 Commerce pursuant to  
27 seq.) shall be applied  
28 California law.

29 SEC. 503. NO

30 The Secretary shall  
31 repayment contract, as  
32 a result of this Act, in  
33 of 1973 (16 U.S.C. §  
34 water supply or fiscal  
35 Water Project.

36 SEC. 504. EFF

37 Nothing in this Act  
38 including area of origin

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TITLE VI—MISCELLANEOUS

SEC. 601. AUTHORIZED SERVICE AREA.

(a) In General.—The authorized service area of the Central Valley Project authorized under the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706) shall include the area within the boundaries of the Kettleman City Community Services District, California, as in existence on the date of enactment of this Act.

(b) Long-term Contract.—

(1) IN GENERAL.—Notwithstanding the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706) and subject to paragraph (2), the Secretary of the Interior, in accordance with the reclamation laws, shall enter into a long-term contract with the Kettleman City Community Services District, California, under terms and conditions mutually agreeable to the parties, for the delivery of up to 900 acre-feet of Central Valley Project water for municipal and industrial use.

(2) LIMITATION.—Central Valley Project water deliveries authorized under the contract entered into under paragraph (1) shall be limited to the minimal quantity necessary to meet the immediate needs of the Kettleman City Community Services District, California, in the event that local supplies or State Water Project allocations are insufficient to meet those needs.

(c) Permit.—The Secretary shall apply for a permit with the State for a joint place of use for water deliveries authorized under the contract entered into under subsection (b) with respect to the expanded service area under subsection (a), consistent with State law.

(d) Additional Costs.—If any additional infrastructure, water treatment, or related costs are needed to implement this section, those costs shall be the responsibility of the non-Federal entity.

SEC. 602. RESCHEDULED WATER.

(a) In General.—In connection with operations of the Central Valley Project, California, if the San Luis Reservoir does not fill by the last day of February of any year, the Secretary of the Interior shall permit any entity with an agricultural water service or repayment contract for the delivery of water from the Delta Division or the San Luis Unit to reschedule into the immediately following contract year (March 1 through the last day of February) any unused Central Valley Project water previously allocated for irrigation purposes.

(b) Apportionment.—If water remaining in Federal storage in San Luis Reservoir on the last day of February of any year is insufficient to meet all rescheduling requests under subsection (a), the Secretary of the Interior shall, based on contract quantity, apportion among all contractors that request to reschedule water all water remaining in San Luis Reservoir on the last day of February of the applicable year.

(c) Availability of Additional Water.—The Secretary shall make all reasonable efforts to make available additional rescheduled water, if the efforts do not interfere with the Central Valley Project operations in the contract year for which Central Valley Project water has been

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rescheduled.

**SEC. 603. FISHERIES DIS**

[TO BE SUPPLIED.]

**SEC. 604. OVERSIGHT B  
FUND.**

(a) Report; Advisory Board.—Section  
(Public Law 102–575; 106 Stat. 4726) is

“(g) Report on Expenditure of Funds.—

“(1) IN GENERAL.—For each fiscal  
Board, shall submit to Congress a plan  
the Restoration Fund during the period

“(2) CONTENTS.—The plan shall include  
expenditure.

“(h) Advisory Board.—

“(1) ESTABLISHMENT.—There is established  
(referred to in this section as the ‘Advisory Board’)  
members appointed by the Secretary

“(2) MEMBERSHIP.—

“(A) IN GENERAL.—The Secretary shall  
represent the various Central Valley

“(i) 3 members shall be

“(ii) 2 members shall be  
Project;

“(iii) 3 members shall be

“(iv) 1 member shall be  
contracts for Central Valley  
Reclamation;

“(v) 1 member shall represent  
protection and restoration

“(vi) 1 member shall represent

“(vii) 1 member shall represent

“(viii) 2 members shall

“(B) OBSERVER.—The Secretary shall  
designate a representative to act

“(C) CHAIRMAN.—The Secretary shall  
subparagraph (A) to serve as Chair

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1 “(3) TERMS.—The term of each member of the Advisory Board shall

2 “(4) DATE OF APPOINTMENTS.—The appointment of a member of the Board shall be made not later than—

3  
4 (A) the date that is 120 days after the date of enactment of this Act;

5 (B) in the case of a vacancy on the Panel described in subsection (a), the date that is 120 days after the date on which the vacancy occurs.

6  
7 “(5) Vacancies.—

8 (A) IN GENERAL.—A vacancy on the Panel shall be filled in the shortest possible time after the original appointment was made and shall be subject to any conditions with respect to the original appointment.

9  
10 (B) FILLING UNEXPIRED TERM.—An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

11  
12 (C) EXPIRATION OF TERMS.—The term of any member shall not expire until the date on which the successor of the member takes office.

13  
14  
15 “(6) Removal.—A Member of the Panel may be removed from office by the Secretary of the Interior.

16  
17 “(7) Federal Advisory Committee Act. —The Panel shall not be subject to the requirements of the Federal Advisory Committee Act.

18  
19 “(8) DUTIES.—The duties of the Advisory Board are—

20 “(A) to meet not less frequently than semiannually to develop and make recommendations to the Secretary regarding priorities and spending and programs carried out under this title;

21  
22 “(B) to ensure that any advice given or recommendation made by the Board reflects the independent judgment of the Advisory Board;

23  
24 “(C) not later than December 31, 2015, and annually thereafter, to submit to the Secretary and Congress the recommendations under subparagraph (A);

25  
26 “(D) not later than December 31, 2015, and biennially thereafter, to submit to Congress a report that details the progress made in achieving the act under section 3406.

27  
28  
29  
30 “(9) ADMINISTRATION.—With the consent of the appropriate agency head, the Board may use the facilities and services of any Federal agency.”

31  
32 “(10) Cooperation and Assistance.—

33 (A) Upon request of the Panel Chairperson for information or assistance in the carrying out of this section, the Secretary of the Interior shall provide the information, unless otherwise prohibited by law.

34  
35 (B) Space and Assistance.—The Secretary of the Interior shall provide the Board with appropriate and adequate office space, together with such equipment, supplies, and communications facilities and services as may be necessary.



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operation of the Panel, and shall provide necessary  
offices and the equipment and facilities located

**SEC. 605. WATER OPERATIONS REVIEW PANEL**

(a) Establishment.—There is established a panel to be  
Review Panel”.

(b) Membership.—

(1) COMPOSITION.—The Panel shall be composed  
Secretary of the Interior, in consultation with the Secretary

(A) 1 member shall be a former State elected  
of the Panel;

(B) 2 members shall be fisheries biologists,

(i) 1 member shall have expertise in Department of

(ii) 1 member shall have expertise in salmon and steelhead

(C) 2 members shall be engineers with substantial

(2) RECOMMENDATIONS. —The Secretary of the Interior  
recommendations

(A) of the Governor of the State for the membership

(B) of the Director of the California Department of Fish and Game  
members appointed under subparagraph (1)(C).

(3) PROHIBITION ON FEDERAL GOVERNMENT EMPLOYMENT.—  
to appointment to the Panel, an individual appointed to the Panel  
not have been an employee of the Federal Government.

(4) DATE OF APPOINTMENTS.—The appointment of a member  
not later than—

(A) the date that is 120 days after the date of the vacancy

(B) in the case of a vacancy on the Panel due to the resignation  
is 120 days after the date on which the vacancy occurred.

(c) Term; Vacancies.—

(1) TERMS.—A member of the Panel shall be appointed for a term  
with respect to the members first appointed under this section

(A) the Chairperson shall be appointed for a term of 4 years

(B) of the members appointed under subsection (1)(A),

(i) 1 member shall be appointed for a term of 4 years

(iii) 1 member shall be appointed for a term of 4 years

(C) of the members appointed under subsection (1)(B),

(i) 1 member shall be appointed for a term of 4 years

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(ii) to increase the survival of listed water supplies for the Central Valley that result from taking the specific proposals;

(iii) to increase such water supplies of listed fish species; and

(iv) that respond to the annual Department reports on the Long-term Operations and Maintenance.

(2) Five-Year Assessment on Effectiveness of Legislative Changes.

(A) IN GENERAL.—No later than five years after the effective date of this Act, the Panel shall

(i) evaluate the effectiveness of

(ii) make legislative recommendations

(I) provisions of this Act that are not effective or for other reasons

(II) alternative legislation or measures to provide additional water supplies for the Central Valley Project without reducing the survival of

(B) GOAL FOR RECOMMENDATIONS.—The Panel shall make legislative recommendations which in the Central Valley Project and the State of California protect and enhance the survival of listed fish species.

(C) REPORT TO CONGRESS.—The Panel shall report to the Congressional committees listed in

(3) Submission of Comments and Proposals.

(A) IN GENERAL.—In preparing the report, the Panel shall invite comments and proposals from

(B) SCHEDULE.—The Panel shall publish proposals under subparagraph (A), together with comments and proposals.

(g) Cooperation and Assistance.—

(1) Upon request of the Panel Chairperson carrying out of this section, the Secretary of the Department shall promptly provide such information, and

(2) Space and Assistance.—The Secretary shall provide appropriate and adequate office space, together with communications facilities and services as necessary, and shall provide necessary maintenance services for facilities located therein.

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1  
2 SEC. 606. CONTINGENCY IN EVENT OF CONTINUING  
3 RESOLUTION FOR FISCAL YEAR 2015.

4 The deadlines that apply to each respective Secretary, or agency, contained in sections 103(b),  
5 103(d), 202, 204, and 205 shall be extended by the number of days that any resolution providing  
6 continuing appropriations for the Fish and Wildlife Service or NOAA Fisheries for fiscal year  
7 2015 is in effect after January 1, 2015 if:

8 (1) such a resolution providing continuing appropriations for these agencies is enacted;

9 (2) the continuing resolution does not include funding for the agency actions prescribed  
10 in the sections of this Act specified above; and

11 (3) a funding shortfall remains for such agency actions after the Secretaries have  
12 consulted with the California Department of Water Resources, Central Valley Project and  
13 State Water Project contractors, and the Interagency Ecological Program.





**From:** Butler, Jessica  
**Sent:** Wednesday, October 8, 2014 10:26 AM  
**To:** 'Tom Birmingham'  
**CC:** David L. Bernhardt  
**Subject:** RE: Text suggestion

Very nice. Thank you!

*Jessica*

Jessica Butler  
Senior Policy Advisor  
Rep. David G. Valadao (CA-21)  
1004 Longworth House Office Building  
Washington, DC 20024  
202-225-4695  
[Jessica.butler@mail.house.gov](mailto:Jessica.butler@mail.house.gov)



---

**From:** Tom Birmingham [mailto:[tbirmingham@westlandswater.org](mailto:tbirmingham@westlandswater.org)]  
**Sent:** Tuesday, October 07, 2014 4:24 PM  
**To:** Butler, Jessica  
**Cc:** David L. Bernhardt  
**Subject:** Fwd: Text suggestion

Jessica,

The following is a definition drafted by David Bernhardt. I hope this is helpful.

Tom

Sent from my iPhone

Begin forwarded message:

**From:** "Bernhardt, David L." <[DBernhardt@BHFS.com](mailto:DBernhardt@BHFS.com)>  
**Date:** October 7, 2014 at 1:40:52 PM EDT  
**To:** "Thomas W. Birmingham ([tbirmingham@westlandswater.org](mailto:tbirmingham@westlandswater.org))"  
<[tbirmingham@westlandswater.org](mailto:tbirmingham@westlandswater.org)>  
**Subject:** Text suggestion

Tom: Here is what I would suggest, I suspect you will tweak it, but I would like to start as broadly as possible.

SEC. 201. DEFINITIONS.

In this title:

(1) ASSISTANT ADMINISTRATOR.—The term “Assistant Administrator” means the Assistant Administrator of NOAA Fisheries.

(2) SECRETARY.—The term “Secretary” means the Secretary of Commerce.

(3) Other Affected Interests. — The term “other affected interests” means the State of California, subdivisions of the State of California, public water agencies and the tens of millions of people who benefit directly and indirectly from the multipurpose operations of the Central Valley Project and the State Water Project.

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**From:** Watts, John (Feinstein)  
**Sent:** Wednesday, October 8, 2014 10:30 AM  
**To:** Bernhardt, David L.  
**CC:** 'Tom Birmingham'; Yeung, Felix (Feinstein); Peterson, James (Feinstein)  
**Subject:** Leg counsel rewrite of draft language attached  
**Attachments:** END14457.pdf; END14457\_XML.doc; redline.doc

David,

Can you look this over to see if any of the edits are significant? The redline document shows the edits.

Leg counsel did change the verb “will” in the MOU subsection to “shall,” as I expected. I think this is a good change to reduce ambiguity.

John

113TH CONGRESS  
2D SESSION

**S.**

To provide drought relief in the State of California, and for other purposes.

---

IN THE SENATE OF THE UNITED STATES

introduced the following bill; which was read twice  
and referred to the Committee on

---

**A BILL**

To provide drought relief in the State of California, and  
for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “California Drought Relief Act of 2014”.

6 (b) TABLE OF CONTENTS.—The table of contents of  
7 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings.

Sec. 3. Definitions.

TITLE I—ADJUSTING DELTA SMELT MANAGEMENT BASED ON  
INCREASED REAL-TIME MONITORING AND UPDATED SCIENCE

Sec. 101. Definition of Secretary.

## 2

- Sec. 102. Revision of incidental take level calculation for Delta smelt to reflect new science.
- Sec. 103. Factoring increased real-time monitoring and updated science into Delta smelt management.

TITLE II—ENSURING SALMONID MANAGEMENT IS RESPONSIVE  
TO NEW SCIENCE

- Sec. 201. Definition of Secretary.
- Sec. 202. Required scientific studies.
- Sec. 203. Process for ensuring salmonid management is responsive to new science.
- Sec. 204. Pilot program to protect native anadromous fish in Stanislaus River.
- Sec. 205. Calfed invasive species pilot projects in the Sacramento-San Joaquin Bay Delta and its tributaries.
- Sec. 206. Mark fishery and harvest management.
- Sec. 207. New actions to benefit Central Valley salmonids.

TITLE III—OPERATIONAL FLEXIBILITY AND DROUGHT RELIEF

- Sec. 301. Findings.
- Sec. 302. Definitions.
- Sec. 303. Operational flexibility in times of drought.
- Sec. 304. Operation of cross-channel gates.
- Sec. 305. Flexibility for export/inflow ratio.
- Sec. 306. Emergency environmental reviews.
- Sec. 307. Prioritizing State revolving funds during droughts.
- Sec. 308. Increased flexibility for regular project operations.
- Sec. 309. Temporary operational flexibility for first few storms of 2015 water year.
- Sec. 310. Expediting water transfers.
- Sec. 311. Warren Act contracts.
- Sec. 312. Additional Warren Act contracts.

TITLE IV—INCREASING WATER STORAGE

- Sec. 401. Findings.
- Sec. 402. Calfed storage feasibility studies.
- Sec. 403. Water storage project construction.
- Sec. 404. Other storage feasibility studies.
- Sec. 405. Dam safety projects with increased storage component.
- Sec. 406. Updating water operations manuals for non-Federal projects.
- Sec. 407. Central Valley Project.

TITLE V—WATER RIGHTS PROTECTIONS

- Sec. 501. Protections for State Water Project contractors.
- Sec. 502. Area of origin protections.
- Sec. 503. No redirected adverse impacts.
- Sec. 504. Effect on State laws.

TITLE VI—MISCELLANEOUS

- Sec. 601. Authorized service area.
- Sec. 602. Rescheduled water.
- Sec. 603. Fisheries disaster declaration.
- Sec. 604. Restoration Fund Advisory Board.

Sec. 605. Water Operations Review Panel.

Sec. 606. Contingency in event of continuing resolution for fiscal year 2015.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) As established in the Proclamation of a  
4 State of Emergency issued by the Governor of the  
5 State on January 17, 2014, the State is experi-  
6 encing record dry conditions.

7 (2) Extremely dry conditions have persisted in  
8 the State since 2012, and the drought conditions are  
9 likely to persist into the future.

10 (3) As of September 2014, the forecast of the  
11 National Weather Service does not show a high like-  
12 lihood of the State experiencing significant precipita-  
13 tion for the remainder of the year.

14 (4) The water supplies of the State are at  
15 record-low levels, as indicated by the fact that all  
16 major Central Valley Project reservoir levels were at  
17 20 to 35 percent of capacity as of September 25,  
18 2014.

19 (5) The lack of precipitation has been a signifi-  
20 cant contributing factor to the 6,091 fires experi-  
21 enced in the State as of September 15, 2014, and  
22 which covered nearly 400,000 acres.

1           (6)(A) According to a study released by the  
2           University of California, Davis in July 2014, the  
3           drought has led to—

4                   (i) the fallowing of 428,000 acres of farm-  
5           land;

6                   (ii) the loss of \$810,000,000 in crop rev-  
7           enue;

8                   (iii) the loss of \$203,000,000 in dairy and  
9           other livestock value; and

10                   (iv) the increase of groundwater pumping  
11           costs by \$454,000,000.

12           (B) The statewide economic costs are estimated  
13           to be \$2,200,000,000, with over 17,000 seasonal and  
14           part-time agricultural jobs lost.

15           (7) Level II water deliveries under the Central  
16           Valley Project Improvement Act (Public Law 102–  
17           575; 106 Stat. 4706) and amendments made by that  
18           Act to refuges have also declined by 25 percent in  
19           the north of the Delta region, and by 35 percent in  
20           the south of the Delta region.

21           (8) Only  $\frac{1}{6}$  of the usual acres of rice fields are  
22           being flooded, which leads to a significant decline in  
23           habitat for migratory birds and an increased risk of  
24           disease at the remaining wetland due to over-  
25           crowding of the birds.

1           (9) The drought of 2013 through 2014 con-  
2           stitutes a serious emergency that poses immediate  
3           and severe risks to human life and safety and to the  
4           environment throughout the State.

5           (10) The serious emergency described in para-  
6           graph (4) requires—

7                   (A) immediate and credible action that re-  
8                   spects the complexity of the water system of the  
9                   State and the importance of the water system  
10                  to the entire State; and

11                   (B) policies that do not pit stakeholders  
12                   against one another, which history shows only  
13                   leads to costly litigation that benefits no one  
14                   and prevents any real solutions.

15           (11) Federal law (including regulations) directly  
16           authorizes expedited decisionmaking procedures and  
17           environmental and public review procedures to en-  
18           able timely and appropriate implementation of ac-  
19           tions to respond to the type and severity of the seri-  
20           ous emergency described in paragraph (4).

21           (12) The serious emergency described in para-  
22           graph (4) fully satisfies the conditions necessary for  
23           the exercise of emergency decisionmaking, analytical,  
24           and public review requirements under—

1 (A) the Endangered Species Act of 1973  
2 (16 U.S.C. 1531 et seq.);

3 (B) the National Environmental Policy Act  
4 of 1969 (42 U.S.C. 4321 et seq.);

5 (C) water control management procedures  
6 of the Corps of Engineers described in section  
7 222.5 of title 33, Code of Federal Regulations  
8 (including successor regulations); and

9 (D) the Reclamation States Emergency  
10 Drought Relief Act of 1991 (Public Law 102–  
11 250; 106 Stat. 53).

12 (13) The smelt biological opinion and salmonid  
13 biological opinion contain reasonable and prudent al-  
14 ternatives to protect listed fish species from being  
15 jeopardized by operation of the Central Valley  
16 Project and State Water Project and to prevent ad-  
17 verse modification of designated critical habitat.

18 (14) The effect of those reasonable and prudent  
19 alternatives in the biological opinions may restrict  
20 the quantity of water pumping that can occur to de-  
21 liver water for agricultural, municipal, industrial,  
22 groundwater, and refuge uses in the State.

23 (15) Data on the difference between water de-  
24 mand and reliable water supplies for various regions  
25 south of the Delta, including the San Joaquin Val-

1       ley, indicate there is a significant annual gap be-  
2       tween reliable water supplies to meet agricultural,  
3       municipal, industrial, groundwater, and refuge water  
4       needs within the South of Delta and Friant Division  
5       of the Central Valley Project and the State Water  
6       Project south of the Sacramento-San Joaquin River  
7       Delta and north of the Tehachapi mountain range  
8       and the demands of those areas.

9               (16) The gap described in paragraph (15) var-  
10       ies depending on the methodology of the analysis  
11       performed, but can be represented in the following  
12       ways:

13               (A) For Central Valley Project South of  
14       Delta water service contractors, if it is assumed  
15       that a water supply deficit is the difference be-  
16       tween the quantity of water available for alloca-  
17       tion and the maximum contract quantity of  
18       water, particularly in years closer to the date of  
19       enactment of this Act, the water supply deficits  
20       that have developed from 1992 to 2014 as a re-  
21       sult of changes aside from natural variations in  
22       hydrology during this timeframe range between  
23       720,000 and 1,100,000 acre-feet.

24               (B) For Central Valley Project and State  
25       Water Project water service contractors south



1 of the Delta and north of the Tehachapi moun-  
2 tain range, if it is assumed that a water supply  
3 deficit is the difference between reliable water  
4 supplies, including maximum water contract de-  
5 liveries, safe yield of groundwater, safe yield of  
6 local and surface supplies and long-term con-  
7 tracted water transfers, and water demands, in-  
8 cluding water demands from agriculture, munic-  
9 ipal and industrial uses, and refuge contractors,  
10 the water supply deficit ranges between ap-  
11 proximately 2,500,000 to 2,700,000 acre-feet.

12 (C)(i) The California Water Plan evaluated  
13 outcomes under current conditions under 198  
14 combinations of climate and growth scenarios,  
15 projecting a range of urban and agricultural re-  
16 liability into the future.

17 (ii) Reliability under this subparagraph is  
18 defined as the percentage of years in which de-  
19 mand is sufficiently met by supply.

20 (iii) Reliability across a range of futures  
21 within the San Joaquin Valley can be presented  
22 as—

23 (I) for the San Joaquin River Hydro-  
24 logic Region, as defined in the California  
25 Water Plan—

1 (aa) urban supply reliability  
2 ranges between 90 and 100 percent,  
3 with a mean reliability across futures  
4 in the high 90th percentile; and

5 (bb) agricultural supply reli-  
6 ability ranges between 70 and 100  
7 percent, with a mean reliability across  
8 futures in the mid-90th percentile;  
9 and

10 (II) for the Tulare Lake Hydrologic  
11 Region, as defined in the California Water  
12 Plan—

13 (aa) urban supply reliability  
14 ranges between 70 and 100 percent,  
15 with a mean reliability across futures  
16 in the mid-90th percentile; and

17 (bb) agricultural supply reli-  
18 ability ranges between 20 and 100  
19 percent, with a mean reliability across  
20 futures in the low 70th percentile.

21 (17) Since the issuance of the biological opin-  
22 ions, recent studies have raised questions about the  
23 benefits to endangered salmonid populations from  
24 water pumping restrictions, including the following:

1 (A)(i) Expert panel reviews have concluded  
2 that instantaneous water velocities in the tidal  
3 Delta affect juvenile salmonids, not tidally aver-  
4 age flows, as previously assumed.

5 (ii) Based on instantaneous water velocity  
6 modeling, water exports have a much smaller  
7 area of effect than was previously believed.

8 (B) Tagging studies conducted since 1993  
9 (representing more than 28,000,000 fish) dem-  
10 onstrate that the proportion of Sacramento  
11 Basin origin Chinook salmon entrained into the  
12 pumping facilities (including prescreen losses)  
13 are on average less than  $\frac{1}{10}$  1 percent.

14 (C) Telemetry studies of Sacramento  
15 Basin and San Joaquin Basin origin juvenile  
16 Chinook salmon have not demonstrated any sig-  
17 nificant adverse effect from water exports on  
18 fish survival.

19 (18) Data of pumping activities at the Central  
20 Valley Project and State Water Project Delta pumps  
21 identify that, on average from Water Year 2009 to  
22 Water Year 2014, pumping activity takes 893 Delta  
23 smelt annually with an authorized take level of  
24 5,003 Delta smelt annually, according to the biologi-  
25 cal opinion issued December 15, 2008.

1           (19) It is worth exploring whether there is a  
2           way to implement the biological opinions that would  
3           preserve the protections afforded endangered fish  
4           and simultaneously increase water deliveries to the  
5           Central Valley Project and State Water Project  
6           without weakening environmental laws or protec-  
7           tions.

8           (20) In 2014, better information exists than  
9           was known in 2008 concerning—

10                   (A) conditions and operations that may or  
11                   may not lead to high salvage events that jeop-  
12                   ardize the fish populations; and

13                   (B) what alternative management actions  
14                   can be taken to avoid jeopardy.

15           (21) Alternative management strategies, such  
16           as trapping and barging juvenile salmon through the  
17           Delta, removing nonnative species, enhancing habi-  
18           tat, and monitoring fish movement and location in  
19           real-time, can contribute significantly to protecting  
20           and recovering these endangered fish species, and at  
21           potentially lower costs to water supplies.

22           (22) Resolution of fundamental policy questions  
23           concerning the extent to which application of the  
24           Endangered Species Act of 1973 (16 U.S.C. 1531 et  
25           seq.) affects the operation of the Central Valley

1 Project and State Water Project is the responsibility  
2 of Congress.

3 **SEC. 3. DEFINITIONS.**

4 In this Act:

5 (1) ASSISTANT ADMINISTRATOR.—The term  
6 “Assistant Administrator” means the Assistant Ad-  
7 ministrator for the National Marine Fisheries Serv-  
8 ice.

9 (2) COMMISSIONER.—The term “Commis-  
10 sioner” means the Commissioner of the Bureau of  
11 Reclamation.

12 (3) DELTA.—The term “Delta” means the Sac-  
13 ramento-San Joaquin Delta and the Suisun Marsh,  
14 as defined in sections 12220 and 29101 of the Cali-  
15 fornia Public Resources Code.

16 (4) DELTA SMELT.—The term “Delta smelt”  
17 means the fish species with the scientific name  
18 *Hypomesus transpacificus*.

19 (5) DIRECTOR.—The term “Director” means  
20 the Director of the United States Fish and Wildlife  
21 Service.

22 (6) EXPORT PUMPING RATES.—The term “ex-  
23 port pumping rates” means the rates of pumping at  
24 the W.C. “Bill” Jones Pumping Plant and the Har-  
25vey O. Banks Pumping Plant, in the southern Delta.

1           (7) JEOPARDY.—The term “jeopardy” means to  
2       reduce appreciably the likelihood of both the survival  
3       and recovery of a listed species in the wild by reduc-  
4       ing the reproduction, numbers, or distribution of  
5       that species.

6           (8) LISTED FISH SPECIES.—The term “listed  
7       fish species” means—

8                 (A) listed salmonid species; and

9                 (B) the Delta smelt.

10          (9) LISTED SALMONID SPECIES.—The term  
11       “listed salmonid species” means—

12                 (A) natural origin steelhead;

13                 (B) natural origin genetic spring run Chi-  
14       nook; and

15                 (C) genetic winter run Chinook salmon.

16          (10) OMR.—The term “OMR” means the Old  
17       and Middle River in the Delta.

18          (11) OMR FLOW OF 5000 CFS.—The term  
19       “OMR flow of 5000 cfs” means Old and Middle  
20       River flow of negative 5,000 cubic feet per second as  
21       measured by—

22                 (A) the smelt biological opinion; and

23                 (B) the salmonid biological opinion.

24          (12) SALMONID BIOLOGICAL OPINION.—The  
25       term “salmonid biological opinion” means the bio-

1 logical opinion issued by the National Marine Fish-  
2 eries Service on June 4, 2009, as amended, and any  
3 successor biological opinion.

4 (13) SMELT BIOLOGICAL OPINION.—The term  
5 “smelt biological opinion” means the biological opin-  
6 ion on the Long-Term Operational Criteria and Plan  
7 for coordination of the Central Valley Project and  
8 State Water Project issued by the United States  
9 Fish and Wildlife Service on December 15, 2008, as  
10 amended, and any successor biological opinion.

11 (14) STATE.—The term “State” means the  
12 State of California.

13 (15) STATE WATER PROJECT.—The term  
14 “State Water Project” means the water project de-  
15 scribed by California Water Code section 11550 et  
16 seq., and operated by the California Department of  
17 Water Resources.

18 **TITLE I—ADJUSTING DELTA**  
19 **SMELT MANAGEMENT BASED**  
20 **ON INCREASED REAL-TIME**  
21 **MONITORING AND UPDATED**  
22 **SCIENCE**

23 **SEC. 101. DEFINITION OF SECRETARY.**

24 In this title, the term “Secretary” means the Sec-  
25 retary of the Interior.

1 **SEC. 102. REVISION OF INCIDENTAL TAKE LEVEL CALCULA-**  
2 **TION FOR DELTA SMELT TO REFLECT NEW**  
3 **SCIENCE.**

4 Not later than October 1, 2015, the Director, in co-  
5 operation with other Federal, State, and local agencies,  
6 shall use the best scientific and commercial data available  
7 to complete a review and, if warranted, a modification of  
8 the incidental take level in the smelt biological opinion that  
9 takes into account, among other considerations—

10 (1) salvage information available over at least  
11 the 18-year period ending on the date of enactment  
12 of this Act;

13 (2) updated or more recently developed statis-  
14 tical models;

15 (3) updated scientific and commercial data; and

16 (4) the most recent information regarding the  
17 environmental factors driving Delta smelt salvage.

18 **SEC. 103. FACTORING INCREASED REAL-TIME MONITORING**  
19 **AND UPDATED SCIENCE INTO DELTA SMELT**  
20 **MANAGEMENT.**

21 (a) IMPLEMENTATION OF ALTERNATIVES.—

22 (1) IN GENERAL.—The reasonable and prudent  
23 alternatives described in the smelt biological opinion  
24 shall be implemented consistent with current best  
25 scientific and commercial data available.



1           (2) ADJUSTMENTS.—Implementation shall be  
2       adjusted accordingly as new scientific and commer-  
3       cial data is developed.

4       (b) INCREASED MONITORING TO INFORM REAL-TIME  
5       OPERATIONS.—

6           (1) IN GENERAL.—Subject to the availability of  
7       funding, the Secretary, in consultation with Delta  
8       science partners, shall conduct additional surveys to  
9       carry out this section on an annual basis at the ap-  
10      propriate time of the year based on environmental  
11      conditions.

12          (2) ADMINISTRATION.—In carrying out this  
13      section, after seeking public input, the Secretary  
14      shall —

15           (A) use the most appropriate survey meth-  
16      ods for the detection of Delta smelt to deter-  
17      mine the extent that adult Delta smelt are dis-  
18      tributed in relation to certain levels of turbidity,  
19      or other environmental factors that may influ-  
20      ence salvage rate; and

21           (B) use results from appropriate survey  
22      methods for the detection of Delta smelt to de-  
23      termine how the Central Valley Project and  
24      State Water Project may be operated more effi-

1           ciently to minimize salvage while maximizing  
2           rates of water export.

3           (3) ADDITIONAL MONITORING.—Effective dur-  
4           ing the period beginning on December 1, 2014, and  
5           ending March 31, 2015, and in each successive De-  
6           cember through March period, if suspended sediment  
7           loads enter the Delta from the Sacramento River  
8           and the suspended sediment loads appear likely to  
9           raise turbidity levels in Old River north of the export  
10          pumps from values below 12 Nephelometric Tur-  
11          bidity Units to values above 12 Nephelometric Tur-  
12          bidity Units, the Secretary shall—

13                 (A) conduct daily monitoring using appro-  
14                 priate survey methods at locations, including  
15                 the vicinity of Station 902, to determine the ex-  
16                 tent that adult Delta smelt are moving with  
17                 turbidity toward the export pumps; and

18                 (B) use results from the monitoring sur-  
19                 veys at locations, including the vicinity of Sta-  
20                 tion 902, to determine how increased trawling  
21                 can inform daily real-time Central Valley  
22                 Project and State Water Project operations to  
23                 minimize salvage while maximizing rates of  
24                 water export.

1 (c) PERIODIC REVIEW OF MONITORING.—At least  
2 once every 5 years or earlier if the Secretary determines  
3 appropriate, the Secretary shall—

4 (1) evaluate whether the monitoring program  
5 under subsection (b), combined with other moni-  
6 toring programs for the Delta, is providing sufficient  
7 data to inform Central Valley Project and State  
8 Water Project operations to minimize salvage while  
9 maximizing rates of water export; and

10 (2) determine whether the monitoring efforts  
11 should be changed in the short- or long-term to pro-  
12 vide more useful data.

13 (d) DELTA SMELT DISTRIBUTION STUDY.—

14 (1) IN GENERAL.—Not later than January 1,  
15 2016, subject to the availability of funding, the Sec-  
16 retary, in consultation with Delta science partners,  
17 shall implement new targeted sampling and moni-  
18 toring specifically designed to understand Delta  
19 smelt abundance, distribution, and the types of habi-  
20 tat occupied by Delta smelt during all life stages.

21 (2) SAMPLING.—The Delta smelt distribution  
22 study required under paragraph (1) shall, at a min-  
23 imum—

24 (A) include recording water quality and  
25 tidal data;

1 (B) be designed to understand Delta smelt  
2 abundance, distribution, habitat use, and move-  
3 ments throughout the Delta during all seasons;

4 (C) consider areas not routinely sampled  
5 by existing monitoring programs, including wet-  
6 land channels, near-shore water, depths below  
7 35 feet, and shallow-water; and

8 (D) use the most biologically appropriate  
9 survey methods, including sampling gear suited  
10 to the type of sampling or monitoring.

11 (e) SCIENTIFICALLY SUPPORTED IMPLEMENTATION  
12 OF OLD AND MIDDLE RIVER FLOW REQUIREMENTS.—In  
13 implementing the provisions of the smelt biological opinion  
14 on reverse flow in the Old and Middle Rivers, the Sec-  
15 retary shall—

16 (1) consider the relevant provisions of the smelt  
17 biological opinion;

18 (2) manage reverse flow in Old and Middle Riv-  
19 ers, as prescribed by the smelt biological opinion, to  
20 minimize water supply reductions for the Central  
21 Valley Project and the State Water Project;

22 (3) document in writing any significant facts  
23 about real-time conditions relevant to the determina-  
24 tions of reverse OMR flow rates, including—

1 (A) whether targeted real-time fish moni-  
2 toring in Old River pursuant to this section, in-  
3 cluding monitoring in the vicinity of Station  
4 902, indicates that a significant increase in the  
5 salvage of Delta smelt is imminent; and

6 (B) whether near-term forecasts with avail-  
7 able salvage models show under prevailing con-  
8 ditions that OMR flow of 5000 cubic feet per  
9 second will cause significantly increased take of  
10 Delta smelt;

11 (4) show in writing that any determination to  
12 manage OMR reverse flow at rates less negative  
13 than 5000 cubic feet per second is necessary to  
14 avoid a negative impact on the long-term survival of  
15 the Delta smelt, including an explanation of the data  
16 examined and the connection between the data and  
17 the choice made, after considering—

18 (A) the findings under paragraph (3);

19 (B) whether continued project operations  
20 over the remainder of the water year would ex-  
21 ceed the incidental take level;

22 (C) the potential effects of entrainment on  
23 subsequent smelt abundance, including consid-  
24 eration of the distribution of the population  
25 throughout the Delta;

1 (D) the water temperature;

2 (E) other factors relevant to the deter-  
3 mination; and

4 (F) whether any alternative measures  
5 could have a lesser water supply impact; and

6 (5) for any subsequent biological opinion, make  
7 the showing required under paragraph (4) for any  
8 determination to manage OMR reverse flow at rates  
9 less negative than the upper limit in the smelt bio-  
10 logical opinion.

11 (f) MEMORANDUM OF UNDERSTANDING.—

12 (1) IN GENERAL.—Not later than December 1,  
13 2014, the Commissioner and the Director shall enter  
14 into a memorandum of understanding to ensure that  
15 the smelt biological opinion is implemented in a  
16 manner that minimizes water supply losses while  
17 complying with applicable laws (including regula-  
18 tions).

19 (2) CHANGES TO SMELT BIOLOGICAL OPIN-  
20 ION.—

21 (A) IN GENERAL.—If the memorandum of  
22 understanding changes any procedures estab-  
23 lished under the smelt biological opinion, addi-  
24 tional consultation shall not be required if—

1 (i) the changes do not have an adverse  
2 effect on listed species; and

3 (ii) the implementation of the memo-  
4 randum of understanding would not be a  
5 major change to implementation of the  
6 smelt biological opinion.

7 (B) TAKE EXEMPTION.—Any change to  
8 the procedures that does not create a new ad-  
9 verse effect to a listed species shall not alter ap-  
10 plication of the take exemption in the incidental  
11 take statement in the biological opinion under  
12 section 7(o)(2) of the Endangered Species Act  
13 of 1973 (16 U.S.C. 1536(o)(2)).

14 **TITLE II—ENSURING SALMONID**  
15 **MANAGEMENT IS RESPON-**  
16 **SIVE TO NEW SCIENCE**

17 **SEC. 201. DEFINITION OF SECRETARY.**

18 In this title, the term “Secretary” means the Sec-  
19 retary of Commerce.

20 **SEC. 202. REQUIRED SCIENTIFIC STUDIES.**

21 (a) TRAP AND BARGE PILOT PROJECT TO INCREASE  
22 SURVIVAL THROUGH THE DELTA.—

23 (1) IN GENERAL.—The Assistant Administrator  
24 and the Commissioner, in collaboration with the  
25 United States Fish and Wildlife Service, the Cali-

1       fornia Department of Fish and Wildlife, and other  
2       interested parties, shall design, permit, implement,  
3       and evaluate a pilot program to test the efficacy of  
4       an experimental trap and barge program to improve  
5       survivals of juvenile salmonids emigrating from the  
6       San Joaquin watershed through the Delta.

7               (2) PLAN.—

8                       (A) IN GENERAL.—Not later than 30 days  
9                       after the date of enactment of this Act, the As-  
10                      sistant Administrator shall convene a working  
11                      group of the relevant agencies and other inter-  
12                      ested parties to develop and execute a plan for  
13                      the design, budgeting, implementation, and  
14                      evaluation of the pilot program described in  
15                      paragraph (1), using existing expertise on trap  
16                      and barge programs as may be available.

17                    (B) CONTENTS.—The plan shall de-  
18                    scribe—

19                               (i) a schedule and budget for the pro-  
20                               gram; and

21                               (ii) the responsible parties for each  
22                               element of the program.

23               (3) REVIEW.—The Assistant Administrator  
24       shall simultaneously—



1 (A) provide an opportunity for public re-  
2 view and comment on the pilot program; and

3 (B) ensure an expeditious independent  
4 peer review of the program to improve the rigor  
5 and likelihood of success of the program.

6 (4) PILOT PROGRAM.—After carrying out para-  
7 graph (2), the Assistant Administrator shall—

8 (A) complete the necessary design and  
9 evaluations of the pilot program; and

10 (B) seek such authorizations and permits  
11 as may be required for the prompt implementa-  
12 tion and evaluation of the pilot program by the  
13 Assistant Administrator, the Commissioner, or  
14 such other parties as the Assistant Adminis-  
15 trator and Commissioner determine appro-  
16 priate.

17 (5) DURATION.—Subject to the availability of  
18 funding, the Assistant Administrator and the Com-  
19 missioner shall—

20 (A) to the maximum extent practicable,  
21 commence implementation of the pilot program  
22 during calendar year 2015 or as soon thereafter  
23 as practicable; and

24 (B) conduct the pilot program for such pe-  
25 riod of time as is necessary to evaluate the effi-

1           eacy of the program to improve survivals across  
2           a range of environmental conditions.

3           (6) ANNUAL REPORTS.—The Assistant Admin-  
4           istrator and the Commissioner shall jointly report  
5           annually to the Committee on Environment and  
6           Public Works of the Senate and the Committee on  
7           Natural Resources of the House of Representatives  
8           on progress made in carrying out this subsection, in-  
9           cluding—

10                 (A) estimated survival rates through the  
11                 Delta for both juvenile salmonids that were  
12                 barged through the Delta and juvenile  
13                 salmonids that were not barged; and

14                 (B) if survival rates are significantly high-  
15                 er for barged fish as compared to other  
16                 outmigrating smolts, recommendations regard-  
17                 ing broadening the pilot program and adjusting  
18                 any relevant recommendations under section  
19                 203.

20           (b) TAGGING STUDIES.—

21                 (1) IN GENERAL.—The Assistant Adminis-  
22                 trator, in consultation with Delta science partners—

23                         (A) shall carry out tagging studies, includ-  
24                         ing acoustic telemetry and Passive Integrated  
25                         Transponder (PIT) tagging studies as appro-

1           priate, under which habitat, predators, flow  
2           conditions, or other factors are experimentally  
3           altered and the behavior and survival of tagged  
4           juvenile salmonids are observed; and

5           (B) may carry out additional studies may  
6           to aid in the understanding of Chinook salmon  
7           and steelhead abundance, distribution, and sur-  
8           vival.

9           (2) SAMPLING.—Sampling under paragraph  
10          (1)(A) shall—

11           (A) include recording water quality and  
12           tidal data;

13           (B) be designed to aid in the under-  
14           standing of salmonid abundance, distribution,  
15           and movements throughout the Bay Delta, in-  
16           cluding estimates of Delta survival from  
17           Knights Landing or from Mossdale to Chipps  
18           Island; and

19           (C) supplement, not supplant, ongoing  
20           acoustic tag and coded wire survival studies in  
21           the San Joaquin and Sacramento Rivers that  
22           the Assistant Administrator determines are cru-  
23           cial for trend monitoring.

1 **SEC. 203. PROCESS FOR ENSURING SALMONID MANAGE-**  
2 **MENT IS RESPONSIVE TO NEW SCIENCE.**

3 (a) IN GENERAL.—The Commissioner and the As-  
4 sistant Administrator shall implement, in accordance with  
5 this section, the reasonable and prudent alternative de-  
6 scribed in the salmonid biological opinion—

7 (1) to allow for and anticipate adjustments in  
8 operating criteria to reflect the best scientific and  
9 commercial data currently available; and

10 (2) to test and evaluate improvements in oper-  
11 ations that will meet applicable regulatory require-  
12 ments and enable improvements in water supply reli-  
13 ability.

14 (b) ANNUAL REVIEWS OF CERTAIN OPERATING CRI-  
15 TERIA.—

16 (1) IN GENERAL.—Not later than December 31,  
17 2015, and at least annually thereafter, subject to  
18 paragraph (4), the Commissioner, in consultation  
19 with and with the assistance of the Assistant Admin-  
20 istrator, shall examine and identify—

21 (A) adjustments to the initiation of Action  
22 IV.2.3 of the salmonid biological opinion relat-  
23 ing to negative OMR flows; and

24 (B) adjustments in the timing, triggers, or  
25 other operational details relating to the imple-  
26 mentation of pumping restrictions under Action

1 IV.2.1 of the salmonid biological opinion relat-  
2 ing to the inflow to export requirements

3 (2) RECOMMENDATIONS.—Pursuant to the con-  
4 sultation and assessments carried out under para-  
5 graph (1), the Commissioner shall make rec-  
6 ommendations to the Assistant Administrator on ad-  
7 justments that, in the exercise of the adaptive man-  
8 agement provisions of the salmonid biological opin-  
9 ion, can improve water supplies and are consistent  
10 with subsection (a) and other requirements of appli-  
11 cable law.

12 (3) IMPLEMENTATION.—The Commissioner  
13 shall implement adjustments described in paragraph  
14 (2) for which the conditions of subsection (c) are  
15 met.

16 (4) SUCCESSOR BIOLOGICAL OPINION.—The As-  
17 sistant Administrator and the Commissioner shall  
18 review and identify adjustments to water supply re-  
19 strictions in any successor biological opinion to the  
20 salmon biological opinion to apply the requirements  
21 of this section to those water supply restrictions in  
22 cases in which there are references to Actions IV.2.1  
23 and IV.2.3 of the salmonid biological opinion.

1       (c) ADJUSTMENTS.—On receiving the recommenda-  
2 tions under subsection (b), the Assistant Administrator  
3 shall—

4           (1) evaluate the effects of the recommended ad-  
5 justments on listed species; and

6           (2) recommend to the Commissioner adjust-  
7 ments for which—

8               (A) the net effect on listed species is equiv-  
9 alent to the net effect using the underlying cri-  
10 teria, taking into account whatever actions or  
11 measures may be implemented in conjunction  
12 with the adjustments to mitigate the effects of  
13 the adjustments; and

14               (B) the effects of the adjustments fall  
15 within the incidental take authorizations.

16       (d) OFFSETTING SPECIES SURVIVAL BENEFITS  
17 FROM OTHER MEASURES.—

18           (1) IN GENERAL.—When examining opportuni-  
19 ties to offset the potential adverse effect of adjust-  
20 ments under subsection (b) to operating criteria  
21 under this section, the Commissioner and the Assist-  
22 ant Administrator shall take into account the poten-  
23 tial salmonid survival improvements that are likely  
24 to result from other measures that, if implemented

1 in conjunction with the adjustments, would offset  
2 the adverse effects of the adjustments.

3 (2) ADMINISTRATION.—When considering off-  
4 setting measures, the Commissioner and the Assist-  
5 ant Administrator shall—

6 (A) consider the type, timing and nature of  
7 the adverse effects to specific species; and

8 (B) ensure that the measures provide  
9 equivalent overall benefits to the listed species  
10 in the aggregate, as long as the change in sur-  
11 vival rates for each species remains consistent  
12 with the Endangered Species Act of 1973 (16  
13 U.S.C. 1531 et seq.) (including regulations).

14 (3) WATER DISTRICTS.—The offsetting meas-  
15 ures may include actions implemented with the sup-  
16 port of a substantial contribution from water dis-  
17 tricts that would benefit from the adjustments.

18 (e) FRAMEWORK FOR EXAMINING OPPORTUNITIES  
19 TO MINIMIZE OR OFFSET THE POTENTIAL ADVERSE EF-  
20 FECT OF ADJUSTMENTS TO OPERATING CRITERIA.—Not  
21 later than December 31, 2015, and every 5 years there-  
22 after, the Assistant Administrator, in consultation with  
23 the Director of the California Department of Fish and  
24 Wildlife, based on the best scientific and commercial data  
25 available and for each listed salmonid species, issue esti-

1 mates of the increase in through-Delta survival the Sec-  
2 retary expects to be achieved—

3           (1) with export restrictions as specified by Rea-  
4 sonable and Prudent Action IV.2.3 of the salmonid  
5 biological opinion as compared to limiting OMR flow  
6 to a fixed rate of 5000 cubic feet per second with-  
7 in the time period Action IV.2.3 of the salmonid bio-  
8 logical opinion is applicable, based on a given rate  
9 of San Joaquin River inflow to the Delta and hold-  
10 ing other relevant factors constant;

11           (2) with San Joaquin River inflow to export re-  
12 strictions specified within Reasonable and Prudent  
13 Action IV.2.1 of the salmonid biological opinion as  
14 compared to in the export restrictions in the April  
15 and May period imposed by the State Water Re-  
16 sources Control Board decision D-1641, based on a  
17 given rate of San Joaquin River inflow to the Delta  
18 and holding other relevant factors constant;

19           (3) by a trap-and-barge program based on the  
20 experience of other systems to the extent the sys-  
21 tems are comparable, and the study described in sec-  
22 tion 202, as that information becomes available;

23           (4) through physical habitat restoration im-  
24 provements;

25           (5) through predation control programs;



1           (6) through temporary barriers, the Cross  
2           Channel Gates, and other projects affecting flow in  
3           the Delta;

4           (7) by salvaging fish that may be entrained  
5           near the entrance to Clifton Court Forebay; and

6           (8) by any other management measures that  
7           may provide equivalent or better benefits for listed  
8           species with improvements to water supplies.

9           (f) SURVIVAL ESTIMATES TO BE QUANTITATIVE TO  
10          THE MAXIMUM EXTENT FEASIBLE.—

11           (1) IN GENERAL.—To the maximum extent fea-  
12           sible, the Assistant Administrator shall make the es-  
13           timates and determinations described in subsection  
14           (e) quantitatively, such as a range of percentage in-  
15           creases in through-Delta survival that could result  
16           from the management measures.

17           (2) QUALITATIVE ESTIMATES.—If the Assistant  
18           Administrator cannot provide a quantitative estimate  
19           of the benefits to the species from a particular man-  
20           agement measure, the Assistant Administrator shall  
21           provide qualitative estimates of the benefits that are  
22           based on the best available science.

23           (3) RANKING.—If the Assistant Administrator  
24           provides qualitative estimates of the benefits to the  
25           species from 1 or more management measures, the

1 Secretary shall, to the maximum extent feasible,  
2 rank the management measures described in sub-  
3 section (e) in terms of the most likely expected con-  
4 tribution to increased through-Delta survival relative  
5 to the other measures.

6 (4) COMPARISON OF BENEFITS.—If at the time  
7 the Assistant Administrator conducts the analysis  
8 under subsection (b), the Secretary has not issued  
9 the estimates of increased through-Delta survival  
10 benefits from different management measures pursu-  
11 ant to subsection (e), the Secretary shall compare  
12 the benefits to the species from different manage-  
13 ment measures based on the best scientific and com-  
14 mercial data available at the time.

15 (g) COMPARISON OF ADVERSE CONSEQUENCES FOR  
16 ALTERNATIVE MANAGEMENT MEASURES OF EQUAL BEN-  
17 EFIT TO THE SALMON.—

18 (1) DEFINITIONS.—In this subsection:

19 (A) EQUIVALENT ALTERNATIVE MEAS-  
20 URE.—The term “equivalent alternative meas-  
21 ure” means an alternative management meas-  
22 ure or combination of alternative management  
23 measures described in paragraph (2).

24 (B) EQUIVALENT EXISTING MEASURE.—  
25 The term “equivalent existing measure” means

1           1 or more existing measures described in sub-  
2           paragraph (A), (B), (C), or (D) of paragraph  
3           (2).

4                   (C) EQUIVALENT INCREASE IN THROUGH-  
5           DELTA SURVIVAL RATES FOR LISTED SALMONID  
6           SPECIES.—The term “equivalent increase in  
7           through-Delta survival rates for listed salmonid  
8           species” means an increase in through-Delta  
9           survival rates that is equivalent when consid-  
10          ering the change in through-Delta survival rates  
11          for the listed salmonid species in the aggregate,  
12          and not necessarily the same change for each  
13          individual species, as long as the change in sur-  
14          vival rates for each species remains consistent  
15          with the Endangered Species Act of 1973 (16  
16          U.S.C. 1531 et seq.) (including implementing  
17          regulations).

18                   (2) ALTERNATIVE MANAGEMENT MEASURES.—  
19          As part of the reviews of operating criteria pursuant  
20          to subsection (b), the Assistant Administrator shall  
21          determine whether any alternative management  
22          measures or combination of alternative management  
23          measures described in paragraphs (3) through (8) of  
24          subsection (e) would provide an increase in through-  
25          Delta survival rates for listed salmonid species that

1 is equivalent to the increase in through-Delta sur-  
2 vival rates for listed salmonid species from the fol-  
3 lowing:

4 (A) With export restrictions as specified by  
5 Action IV.2.3 of the salmonid biological opinion,  
6 as compared to limiting OMR flow to a fixed  
7 rate of 5000 cubic feet per second within the  
8 time period in Action IV.2.3 of the salmonid bi-  
9 ological opinion as applicable.

10 (B) With export restrictions as specified by  
11 Action IV.2.3 of the salmonid biological opinion,  
12 as compared to a modification of Action IV.2.3  
13 of the salmonid biological opinion that would  
14 provide additional water supplies, other than  
15 that described in subparagraph (A).

16 (C) With San Joaquin River inflow to ex-  
17 port restrictions specified within Action IV.2.1  
18 of the salmonid biological opinion, as compared  
19 to the export restrictions in the April/May pe-  
20 riod imposed by the State Water Resources  
21 Control Board decision D-1641.

22 (D) With San Joaquin River inflow to ex-  
23 port restrictions specified within Action IV.2.1  
24 of the salmonid biological opinion, as compared  
25 to a modification of Action IV.2.1 that would

1 provide additional water supplies, other than  
2 that described in subparagraph (C).

3 (3) EQUIVALENT ALTERNATIVE MEASURES.—If  
4 the Assistant Administrator identifies an equivalent  
5 alternative measure pursuant to paragraph (2), the  
6 Assistant Administrator shall determine whether—

7 (A) it is technically feasible and within  
8 Federal jurisdiction to implement the equivalent  
9 alternative measure; and

10 (B) the adverse consequences of doing so  
11 are less than the adverse consequences of the  
12 equivalent existing measure, including a concise  
13 evaluation of the adverse consequences to other  
14 affected interests.

15 (4) OPERATING CRITERIA.—If the Assistant  
16 Administrator makes the findings in subparagraphs  
17 (A) and (B) of paragraph (3), the Assistant Admin-  
18 istrator and the Commissioner shall adjust the oper-  
19 ating criteria in the salmonid biological opinion pur-  
20 suant to this subsection to implement the equivalent  
21 alternative measure in place of the equivalent exist-  
22 ing measure in order to increase water supplies to  
23 the maximum extent practicable while maintaining a  
24 net combined effect of equivalent through-Delta sur-  
25 vival rates for the listed salmonid species.

1 (h) TRACKING ADVERSE EFFECTS BEYOND THE  
2 RANGE OF EFFECTS ACCOUNTED FOR IN THE SALMONID  
3 BIOLOGICAL OPINION AND COORDINATED OPERATION  
4 WITH SMELT BIOLOGICAL OPINION.—

5 (1) IN GENERAL.—Among the adjustments to  
6 the operational criteria considered through the  
7 adaptive management process under this section, the  
8 Assistant Administrator and the Commissioner  
9 shall—

10 (A) evaluate the effect on listed salmonid  
11 species and water supply of the potential ad-  
12 justment to operational criteria described in  
13 subparagraph (B); and

14 (B) consider requiring that before all or  
15 part of the provisions of Action IV.2.1 or IV.2.3  
16 of the salmonid biological opinion are imposed  
17 in any specific instance, the Assistant Adminis-  
18 trator show that the implementation of those  
19 provisions in that specific instance is necessary  
20 to avoid additional adverse effects on listed  
21 salmonid species beyond the range of effects  
22 analyzed and accounted for in the salmonid bio-  
23 logical opinion.

24 (2) OPERATIONAL CRITERIA.—The Assistant  
25 Administrator, the Director, and the Commissioner,

1 in coordination with State officials as appropriate,  
2 shall establish operational criteria to coordinate  
3 management of OMR flows under the smelt biological  
4 opinion and the salmonid biological opinion, to  
5 take advantage of opportunities to provide additional  
6 water supplies from the coordinated implementation  
7 of the smelt biological opinion and the salmonid biological  
8 opinion.

9 (i) REAL-TIME MONITORING AND MANAGEMENT.—

10 (1) IN GENERAL.—The Assistant Administrator  
11 and the Commissioner shall, through the adaptive  
12 management provisions of the National Marine Fisheries  
13 Service of the salmonid biological opinion, analyze whether  
14 date-certain triggers that limit OMR  
15 reverse flow to 5000 cubic feet per second could  
16 be adjusted to instead use real-time migration information  
17 on salmonids.

18 (2) IMPLEMENTATION.—If the analysis shows  
19 that the use of real-time information to trigger OMR  
20 flow limitations would improve water supply without  
21 causing significant adverse effects to Winter-run  
22 Chinook salmon, the real-time management triggers  
23 shall be implemented.

1 **SEC. 204. PILOT PROGRAM TO PROTECT NATIVE ANAD-**  
2 **ROMOUS FISH IN STANISLAUS RIVER.**

3 (a) DEFINITIONS.—In this section:

4 (1) DISTRICTS.—The term “districts” means—

5 (A) the Oakdale Irrigation District; and

6 (B) the South San Joaquin Irrigation Dis-  
7 trict.

8 (2) PILOT PROGRAM.—The term “pilot pro-  
9 gram” means the nonnative predator removal pilot  
10 program established under this section.

11 (b) ESTABLISHMENT.—The Assistant Administrator,  
12 in consultation with the Director and the head of the Cali-  
13 fornia Department of Fish and Wildlife, shall, subject to  
14 the availability of funding, develop and conduct a pilot  
15 nonnative predator fish removal program to remove from  
16 the areas in and around the Delta, including the  
17 Stanislaus River—

18 (1) nonnative striped bass;

19 (2) nonnative smallmouth bass;

20 (3) nonnative largemouth bass;

21 (4) nonnative black bass; and

22 (5) other nonnative predator fish.

23 (c) REQUIREMENTS.—The pilot program shall—

24 (1) be scientifically based;

25 (2) include methods to quantify, by, among  
26 other methods, evaluating the number of juvenile



1       anadromous fish that migrate past the rotary screw  
2       trap located at Caswell—

3               (A) the number and size of predator fish  
4               removed each year from the program area;

5               (B) the impact of the removal on the over-  
6               all abundance of predator fish in the program  
7               area; and

8               (C) the impact of the removal on the popu-  
9               lations of juvenile anadromous fish found in the  
10              Stanislaus River and elsewhere;

11             (3) among other methods, use wire fyke trap-  
12             ping, portable resistance board weirs, and boat  
13             electrofishing, which are among the most effective  
14             predator collection techniques that minimize effects  
15             to native anadromous fish;

16             (4) be developed by not later than 180 days  
17             after the date of enactment of this Act, including the  
18             application for all necessary scientific research and  
19             species enhancement permits under section 10(a)(1)  
20             of the Endangered Species Act of 1973 (16 U.S.C.  
21             1539(a)(1)) for the performance of the pilot pro-  
22             gram;

23             (5) be implemented on the first business day of  
24             the calendar year following the date of issuance of  
25             all necessary scientific research and species enhance-

1       ment permits and funding needed to commence the  
2       pilot program; and

3           (6) be implemented for a period of 7 consecu-  
4       tive calendar years.

5       (d) MANAGEMENT.—

6           (1) IN GENERAL.—The Assistant Administrator  
7       may and is encouraged to enter into agreements  
8       with interested local water districts to jointly de-  
9       velop, implement and evaluate the pilot program.

10       (2) ADMINISTRATION.—Parties to an agree-  
11      ment under paragraph (1) are encouraged—

12           (A) to work collaboratively to ensure the  
13      performance of the pilot program; and

14           (B) to discuss and agree on, among other  
15      elements, changes in the structure, manage-  
16      ment, personnel, techniques, strategy, data col-  
17      lection, reporting, and conduct of the pilot pro-  
18      gram.

19       (e) IMPLEMENTATION.—

20           (1) IN GENERAL.—On agreement between the  
21      Assistant Administrator and any participating dis-  
22      tricts, the pilot program may be carried out by—

23           (A) personnel employed by the districts;

24           (B) qualified private contractors hired by  
25      the districts;

1 (C) personnel employed by, on loan to, or  
2 otherwise assigned to the National Marine  
3 Fisheries Service; or

4 (D) any combination of individuals and en-  
5 tities described in subparagraphs (A) through  
6 (C).

7 (2) PARTICIPATION BY THE NATIONAL MARINE  
8 FISHERIES SERVICE.—

9 (A) IN GENERAL.—If the districts elect  
10 pursuant to paragraph (1) to conduct the pilot  
11 program using the personnel employed, or  
12 qualified private contractors hired, by the dis-  
13 tricts, the Commissioner may assign an indi-  
14 vidual described in paragraph (1)(C) to be  
15 present for any field activity carried out under  
16 the pilot program to ensure compliance with  
17 subsection (c).

18 (B) COSTS.—Subject to subsection (f), the  
19 districts shall pay 100 percent of the cost of  
20 participation by any individual under subpara-  
21 graph (A).

22 (3) TIMING OF ELECTION.—The districts  
23 shall—

24 (A) make an election under paragraph (1)  
25 with respect to the following calendar year for

1 each calendar year during which the pilot pro-  
2 gram is conducted; and

3 (B) notify the Assistant Administrator of  
4 that election by not later than October 15 of  
5 the calendar year during which the election is  
6 made.

7 (f) FUNDING.—

8 (1) ANNUAL FUNDING.—

9 (A) IN GENERAL.—The Commissioner, the  
10 Assistant Administrator, and the participating  
11 districts shall develop a budget and funding  
12 plan for the pilot project that will allocate costs  
13 appropriately among the participating entities.

14 (B) NOTIFICATION BY COMMISSIONER.—  
15 Not later than December 1 of each calendar  
16 year during which the pilot program is con-  
17 ducted, the Commissioner shall submit to the  
18 districts an estimate of the cost to be incurred  
19 by the Bureau of Reclamation under the pilot  
20 program during the following calendar year, if  
21 any, including the cost of any data collection  
22 and publication under subsection (g).

23 (C) FAILURE TO PAY.—If an amount equal  
24 to the amount described in an estimate under  
25 subparagraph (B) is not provided to the Assist-

1 ant Administrator by the districts by not later  
2 than December 31 of the applicable calendar  
3 year—

4 (i) the Assistant Administrator shall  
5 have no obligation to conduct any activity  
6 under the pilot program that is otherwise  
7 scheduled to be carried out by the Assist-  
8 ant Administrator; and

9 (ii) the districts shall be prohibited  
10 from conducting any activity under the  
11 pilot program until the date on which full  
12 payment is made by the districts.

13 (2) ACCOUNTING.—

14 (A) IN GENERAL.—Not later than Sep-  
15 tember 1 of each calendar year during which  
16 the pilot program is conducted, the Assistant  
17 Administrator shall provide to the participating  
18 entities an accounting of the expenses of the  
19 Assistant Administrator under the pilot pro-  
20 gram during the preceding calendar year.

21 (B) ESTIMATE DISCREPANCIES.—

22 (i) SHORTFALL.—If the estimated  
23 amount paid by the districts under para-  
24 graph (1) for a calendar year was less than

1 the actual costs incurred by the Assistant  
2 Administrator—

3 (I) the districts shall pay to the  
4 Assistant Administrator an amount  
5 equal to the difference by not later  
6 than September 30 of that calendar  
7 year; and

8 (II) the Assistant Administrator  
9 shall not be required to carry out any  
10 activity otherwise scheduled under the  
11 pilot program.

12 (ii) EXCESS.—If the estimated  
13 amount paid by the districts under para-  
14 graph (1) for a calendar year was greater  
15 than the actual costs incurred by the As-  
16 sistant Administrator, a credit shall be  
17 provided to the districts, which shall be de-  
18 ducted from the estimated payment re-  
19 quired to be paid by the districts for the  
20 following calendar year.

21 (g) DATA REPORTING AND EVALUATION.—

22 (1) IN GENERAL.—Not later than the 15th day  
23 of each month during which the pilot program is  
24 conducted, the Assistant Administrator shall publish  
25 on the website of the National Marine Fisheries

1       Service a tabular summary of the raw data collected  
2       under the pilot program during the preceding  
3       month.

4           (2) REPORT.—Not later than June 30 of the  
5       calendar year following completion of the pilot pro-  
6       gram, the Assistant Administrator and the districts  
7       shall jointly submit a report for peer review that—

8           (A) discusses the findings and conclusions  
9       of the pilot program;

10          (B) synthesizes the data described in para-  
11       graph (1); and

12          (C) makes recommendations for additional  
13       studies and activities.

14       (h) PERMIT PROCESS.—

15          (1) IN GENERAL.—Not later than 1 year after  
16       the date of filing of an application by the Assistant  
17       Administrator and the districts, the Secretary of the  
18       Interior, the Secretary of Commerce, or both, as ap-  
19       plicable, shall issue all necessary scientific research  
20       and species enhancement permits under section  
21       10(a)(1) of the Endangered Species Act (16 U.S.C.  
22       1539(a)(1)) for the performance of the pilot pro-  
23       gram.

1           (2) NAMED PARTIES.—Each permit under  
2           paragraph (1) shall be issued in the name of the As-  
3           sistant Administrator and the participating districts.

4           (3) PRIVATE CONTRACTORS.—The districts may  
5           delegate the authority under this subsection to any  
6           qualified private contractor retained in accordance  
7           with subsection (e)(1)(B).

8           (i) EMERGENCY ENVIRONMENTAL REVIEWS.—To ex-  
9           pedite the environmentally beneficial pilot program estab-  
10          lished under this section for the conservation of threatened  
11          and endangered species, the Secretary of the Interior shall  
12          consult with the Director of the Council on Environmental  
13          Quality in accordance with section 1506.11 of title 40,  
14          Code of Federal Regulations (or a successor regulation),  
15          to develop alternative arrangements to achieve compliance  
16          with the National Environmental Policy Act of 1969 (42  
17          U.S.C. 4321 et seq.) for purposes of this section.

18          (j) SUNSET.—The authorities provided by this sec-  
19          tion shall expire on the date that is 7 years after the date  
20          of commencement of the pilot program.

21   **SEC. 205. CALFED INVASIVE SPECIES PILOT PROJECTS IN**  
22                           **THE SACRAMENTO-SAN JOAQUIN BAY DELTA**  
23                           **AND ITS TRIBUTARIES.**

24          (a) FINDINGS.—Congress finds the following:



1           (1) The Sacramento-San Joaquin Bay Delta  
2           and its tributaries—

3                   (A) is 1 of the largest and most diverse es-  
4                   tuaries in the United States;

5                   (B) is a natural treasure and a vital link  
6                   in the water system of California;

7                   (C) has native biodiversity important to  
8                   the ecological and economic systems of Cali-  
9                   fornia, including water deliveries to agriculture,  
10                  municipalities, and the environment and fish-  
11                  eries industries; and

12                  (D) has river tributaries important for  
13                  rearing of salmon and steelhead smolts, which  
14                  experience a high level of predation from non-  
15                  native species.

16           (2) Past, present, and future introductions of  
17           invasive species are and will be a major factor in the  
18           decline of native pelagic and anadromous endan-  
19           gered or threatened species in the Sacramento-San  
20           Joaquin Bay Delta and its tributaries.

21           (3) More than 250 nonnative aquatic and plant  
22           species have been introduced into the Delta and its  
23           tributaries, of which at least 185 species have be-  
24           come established and have altered the ecosystem of  
25           the Sacramento-San Joaquin Bay Delta watershed.

1           (4) The Bay Delta Conservation Plan, the Re-  
2           covery Plan for the Evolutionary Significant Units  
3           of Sacramento River Winter-run Chinook Salmon  
4           and Central Valley Spring-run Chinook Salmon and  
5           the Distinct Population Segment of the Central Val-  
6           ley Steelhead, the Recovery Plan for the Sac-  
7           ramento-San Joaquin Delta Native Fishes, and the  
8           multiple 5-year reviews of those plans all highlight  
9           that introduced nonnative invasive species are a sig-  
10          nificant factor in the decline of native fish species.

11          (5) Those nonnative species, which include  
12          invasive aquatic vegetation, predators, and competi-  
13          tors, directly or indirectly cause biological stress for  
14          pelagic and anadromous endangered or threatened  
15          fish species in the Sacramento-San Joaquin Bay  
16          Delta and its tributaries.

17          (6) If threats by nonnative species to native fish  
18          species are not addressed, there is a high probability  
19          that native species of the pelagic and anadromous  
20          community of the Sacramento-San Joaquin Bay  
21          Delta watershed will go extinct.

22          (7) The Calfed Bay-Delta Authorization Act  
23          (title I of Public Law 108–361; 118 Stat. 1681) au-  
24          thorized a program to prevent, control, and eradicate

1       invasive species, but as of the date of enactment of  
2       this Act, the program has not been implemented.

3           (8) A focused pilot program needs to be con-  
4       ducted within the Delta and river tributaries to re-  
5       duce threats to native listed species by nonnative  
6       species.

7           (9) Reducing nonnative stressors on native list-  
8       ed species will contribute to both native listed spe-  
9       cies recovery and lowering the impact on down-  
10      stream water users as those native listed species re-  
11      cover.

12      (b) PILOT PROJECTS TO IMPLEMENT CALFED  
13      INVASIVE SPECIES PROGRAM.—

14           (1) IN GENERAL.—Not later than January 1,  
15      2016, the Secretary of the Interior, in collaboration  
16      with the Secretary of Commerce and the Director of  
17      the California Department of Fish and Wildlife,  
18      shall begin pilot projects to implement the invasive  
19      species program, including prevention, control, and  
20      eradication activities, as authorized under section  
21      103(d)(6)(A)(iv) of the Calfed Bay-Delta Authoriza-  
22      tion Act (118 Stat. 1690; Public Law 108–361).

23           (2) REQUIREMENTS.—The pilot projects shall—

24           (A) seek to reduce invasive aquatic vegeta-  
25      tion, predators, and other competitors that are

1 major factors in the decline of native listed pe-  
2 lagic and anadromous species that occupy the  
3 Sacramento and San Joaquin Rivers and their  
4 tributaries and the Sacramento-San Joaquin  
5 Bay-Delta; and

6 (B) address how to remove, reduce, or con-  
7 trol the effects of species including Asiatic  
8 clams, silversides, gobies, Brazilian water weed,  
9 largemouth bass, smallmouth bass, striped bass,  
10 crappie, bluegill, white and channel catfish, and  
11 brown bullheads.

12 (3) PHASES.—The activities of the Secretary of  
13 the Interior under this subsection shall consist of the  
14 following phases:

15 (A) PHASE 1.—The Secretary of the Inte-  
16 rior shall convene a panel of experts, including  
17 experts recommended by the State—

18 (i) to identify the nonnative species  
19 having the greatest impact on the viability  
20 of native pelagic and anadromous native  
21 listed species;

22 (ii) to identify the nonnative species  
23 for which actions to reduce or control the  
24 population is determined to be possible;  
25 and

1 (iii) to design a study to reduce the  
2 nonnative species identified in clauses (i)  
3 and (ii) and prepare a cost estimate to im-  
4 plement this study.

5 (B) PHASE 2.—The Secretary of the Inte-  
6 rior shall test the general viability of nonnative  
7 reduction methods, including either direct pred-  
8 ator removal or alteration of channel conditions,  
9 or a combination of those methods, through  
10 pilot projects at multiple sites in addition to the  
11 projects on the Stanislaus River pursuant to  
12 section 204, including known hotspots of pred-  
13 ator aggregation or activity, such as—

- 14 (i) Clifton Court Forebay;
- 15 (ii) Central Valley Project intakes;
- 16 (iii) Head of Old River;
- 17 (iv) Georgiana Slough;
- 18 (v) Old and Middle Rivers;
- 19 (vi) Franks Tract;
- 20 (vii) Paintersville Bridge;
- 21 (viii) individual river tributaries im-  
22 portant for wild populations of anad-  
23 romous species listed as threatened or en-  
24 dangered under the Endangered Species  
25 Act of 1973 (16 U.S.C. 1531 et seq.);

1 (ix) human-made submerged struc-  
2 tures; and

3 (x) salvage release sites.

4 (C) PHASE 3.—If feasible, the Secretary of  
5 the Interior shall implement nonnative reduc-  
6 tion methods at a larger number of sites, incor-  
7 porating information learned during the first  
8 and second phases.

9 (4) DATA COLLECTION.—The Secretary of the  
10 Interior shall collect data associated with the imple-  
11 mentation of the projects described in this sub-  
12 section, and shall specifically collect data on the im-  
13 pact on—

14 (A) pelagic and anadromous species listed  
15 as threatened or endangered under the Endan-  
16 gered Species Act of 1973 (16 U.S.C. 1531 et  
17 seq.);

18 (B) water quality; and

19 (C) water supply.

20 (5) REVISIONS.—After assessing the data col-  
21 lected as described in paragraph (4), the Secretary  
22 of the Interior, in collaboration with the Secretary of  
23 Commerce and the Director of the California De-  
24 partment of Fish and Wildlife, shall, if appropriate,  
25 annually recommend revisions to the reasonable and

1 prudent alternatives contained in the salmonid bio-  
2 logical opinion and the smelt biological opinion, or  
3 other administrative Federal requirements governing  
4 the operation of the Central Valley Project and the  
5 State Water Project, that are likely to produce addi-  
6 tional fishery, water quality, and water supply bene-  
7 fits.

8 (c) IMPLEMENTATION.—The Secretary of the Inte-  
9 rior shall implement the Calfed program described in sub-  
10 section (b) for at least a period of 7 consecutive years be-  
11 ginning on the date of implementation.

12 (d) REPORTING REQUIREMENTS.—The Secretary of  
13 the Interior shall provide to the Committee on Environ-  
14 ment and Public Works of the Senate and the Committee  
15 on Natural Resources of the House of Representatives—

16 (1) not later than January 1, 2016, a report  
17 containing a description of the projects described in  
18 subsection (b), including the application for all nec-  
19 essary scientific research and species enhancement  
20 permits under section 10(a)(1) of the Endangered  
21 Species Act of 1973 (16 U.S.C. 1539(a)(1)), and for  
22 the performance of the Calfed invasive species pro-  
23 gram;

1           (2) on the completion of Phase 1 as described  
2           in subsection (b)(3)(A), a report describing the im-  
3           plementation and cost effectiveness of that phase;

4           (3) not later than 2 years after the project  
5           under this subsection begins, a report describing—

6                   (A) the progress of the eradication of the  
7                   nonnative species in the Delta and its tribu-  
8                   taries;

9                   (B) how those efforts have helped the Re-  
10                  covery Plans for endangered and threatened  
11                  anadromous and pelagic species in the Delta  
12                  watershed; and

13                  (C) the associated cost effectiveness of  
14                  each control measure; and

15           (4) after the pilot projects are complete, a re-  
16           port describing the results of the program, including  
17           recommendations on whether the program should be  
18           continued, how the program may be taken to full  
19           scale in the most cost-effective manner, and how a  
20           mitigation program for the Central Valley Project  
21           allowable under section 10(a)(1) of the Endangered  
22           Species Act of 1973 (16 U.S.C. 1539(a)(1)) could be  
23           implemented.

24           (e) EMERGENCY ENVIRONMENTAL REVIEWS.—To  
25           expedite the environmentally beneficial program for the



1 conservation of threatened and endangered species carried  
2 out under this section, the Secretary of the Interior shall  
3 consult with the Council on Environmental Quality in ac-  
4 cordance with section 1506.11 of title 40, Code of Federal  
5 Regulations (including successor regulations) to develop  
6 alternative arrangements for the program to comply with  
7 the National Environmental Policy Act of 1969 (42 U.S.C.  
8 4321 et seq.).

9 **SEC. 206. MARK FISHERY AND HARVEST MANAGEMENT.**

10 (a) IN GENERAL.—To minimize the impact of harvest  
11 and project operations on salmonids, contribute to recov-  
12 ery of stocks of endangered or threatened species, improve  
13 management of fish stocks of both hatchery and natural  
14 origins, and to minimize risk of a natural origin fall Chi-  
15 nook listing under the Endangered Species Act of 1973  
16 (16 U.S.C. 1531 et seq.), not later than 60 days after  
17 the date of enactment of this Act, the Assistant Adminis-  
18 trator, in partnership with the Director of the California  
19 Department of Fish and Wildlife and persons responsible  
20 for funding Central Valley hatcheries, shall convene an  
21 independent science panel to follow up on the 2012 rec-  
22 ommendations of the California Hatchery Scientific Re-  
23 view Group by providing an assessment of costs and bene-  
24 fits associated with marking, with tagging, and with a pro-

1 gram that combines marking and tagging Central Valley  
2 hatchery produced fall Chinook.

3 (b) ADMINISTRATION.—The Assistant Administrator  
4 shall ensure that the independent science panel—

5 (1) includes an appropriate number of scientific  
6 experts as determined and appointed by the Assist-  
7 ant Administrator, and an equal number of scientific  
8 experts selected by entities responsible for funding  
9 California salmon mitigation hatcheries;

10 (2) considers and gives equal weight to both in-  
11 land and ocean monitoring and management needs,  
12 including harvest; and

13 (3) completes the review by December 31,  
14 2015.

15 (c) IMPLEMENTATION.—Not later than October 1,  
16 2018, the Assistant Administrator shall assess and imple-  
17 ment harvest management strategies to provide better pro-  
18 tection for sensitive Chinook stocks while still allowing for  
19 harvest of hatchery fall Chinook.

20 **SEC. 207. NEW ACTIONS TO BENEFIT CENTRAL VALLEY**  
21 **SALMONIDS.**

22 Not later than March 1, 2016, under similar terms  
23 and conditions as successful United States Fish and Wild-  
24 life Service programs on Clear Creek and Battle Creek,  
25 the Director, in collaboration with the Director of the Cali-

1    ornia Department of Fish and Wildlife, the Commissioner  
2    of the Bureau of Reclamation, or both, shall issue nec-  
3    essary permits and otherwise facilitate the deployment of  
4    temporary in-river structures—

5           (1) to protect and grow natural origin spring  
6    Chinook populations by blocking access to hatchery  
7    origin fall Chinook; and

8           (2) to prevent hatchery origin Chinook salmon  
9    and steelhead from reaching spawning grounds  
10   where the species will compete for spawning with  
11   natural origin fish listed under the Endangered Spe-  
12   cies Act of 1973 (16 U.S.C. 1531 et seq.).

### 13   **TITLE III—OPERATIONAL FLEXI-** 14   **BILITY AND DROUGHT RE-** 15   **LIEF**

#### 16   **SEC. 301. FINDINGS.**

17       Based on the congressional findings in section 2,  
18   Congress finds that it is appropriate and necessary for  
19   Federal agencies to exercise the maximum amount of flexi-  
20   bility provided to the agencies under applicable laws (in-  
21   cluding regulations) to maximize delivery of water supplies  
22   while providing the same or better levels of protection for  
23   species as in effect on the date of enactment of this Act.

#### 24   **SEC. 302. DEFINITIONS.**

25       In this title:

1           (1) CENTRAL VALLEY PROJECT.—The term  
2           “Central Valley Project” has the meaning given the  
3           term in section 3403 of the Central Valley Project  
4           Improvement Act (Public Law 102–575; 106 Stat.  
5           4707).

6           (2) KLAMATH PROJECT.—The term “Klamath  
7           Project” means the Bureau of Reclamation project  
8           in the States of California and Oregon, as author-  
9           ized under the Act of June 17, 1902 (32 Stat. 388,  
10          chapter 1093).

11          (3) RECLAMATION PROJECT.—The term “Rec-  
12          lamation Project” means a project constructed pur-  
13          suant to the authorities of the reclamation laws and  
14          whose facilities are wholly or partially located in the  
15          State.

16          (4) SECRETARIES.—The term “Secretaries”  
17          means—

18                 (A) the Administrator of the Environ-  
19                 mental Protection Agency;

20                 (B) the Secretary of Agriculture;

21                 (C) the Secretary of Commerce; and

22                 (D) the Secretary of the Interior.

23 **SEC. 303. OPERATIONAL FLEXIBILITY IN TIMES OF**  
24 **DROUGHT.**

25          (a) WATER SUPPLIES.—

1           (1) IN GENERAL.—In response to a declaration  
2           of a state of drought emergency by the Governor of  
3           California and for the period of time such a drought  
4           declaration remains in effect, the Secretaries shall  
5           provide the maximum quantity of water supplies  
6           practicable to Central Valley Project agricultural,  
7           municipal and industrial, and refuge service and re-  
8           payment contractors, State Water Project contrac-  
9           tors, and any other Indian tribe, locality, or munici-  
10          pality in the State, by approving, consistent with ap-  
11          plicable laws (including regulations), projects and  
12          operations to provide additional water supplies as  
13          quickly as practicable based on available information  
14          to address the emergency conditions.

15          (2) APPLICATION.—Paragraph (1) applies to  
16          projects or operations involving the Klamath Project  
17          if the projects or operations would benefit Federal  
18          water contractors in the State.

19          (b) ADMINISTRATION.—In carrying out subsection  
20          (a), the Secretaries shall, consistent with applicable laws  
21          (including regulations)—

22                (1) issue all necessary permit decisions under  
23                the authority of the Secretaries not later than 30  
24                days after the date on which the Secretaries receive  
25                a completed application from the State to place and

1 use temporary barriers or operable gates in Delta  
2 channels to improve water quantity and quality for  
3 the State Water Project and the Central Valley  
4 Project south of Delta water contractors and other  
5 water users, on the condition that the barriers or op-  
6 erable gates—

7 (A) provide benefits for species protection  
8 and in-Delta water user water quality; and

9 (B) are designed so that formal consulta-  
10 tions under section 7 of the Endangered Spe-  
11 cies Act of 1973 (16 U.S.C. 1536) are not nec-  
12 essary;

13 (2) require the Director of the United States  
14 Fish and Wildlife Service and the Commissioner of  
15 Reclamation—

16 (A) to complete, not later than 30 days  
17 after the date on which the Director or the  
18 Commissioner receives a complete written re-  
19 quest for water transfer associated with volun-  
20 tarily fallowing nonpermanent crops in the  
21 State, all requirements under the National En-  
22 vironmental Policy Act of 1969 (42 U.S.C.  
23 4321 et seq.) and the Endangered Species Act  
24 of 1973 (16 U.S.C. 1531 et seq.) necessary to  
25 make final permit decisions on the request; and

1 (B) to grant any water transfer request de-  
2 scribed in subparagraph (A) to maximize the  
3 quantity of water supplies available for non-  
4 habitat uses, on the condition that the fallowing  
5 and associated water transfer are in compliance  
6 with applicable Federal laws (including regula-  
7 tions);

8 (3) adopt a 1:1 inflow to export ratio for the in-  
9 crement of increased flow of the San Joaquin River,  
10 as measured as a 3-day running average at Vernalis  
11 during the period beginning on April 1, and ending  
12 on May 31, resulting from voluntary transfers and  
13 exchanges of water supplies, on the condition that a  
14 proposed transfer or exchange under this paragraph  
15 may only proceed if the Secretary of the Interior de-  
16 termines that—

17 (A) the environmental effects of the pro-  
18 posed transfer or exchange are consistent with  
19 effects permissible under applicable law (includ-  
20 ing regulations); and

21 (B) Delta conditions are suitable to allow  
22 movement of the transfer water through the  
23 Delta consistent with the permitted rights of  
24 the Commissioner of Reclamation; and

1           (4) provide additional priority for eligible  
2       WaterSMART projects that address drought condi-  
3       tions, including projects that—

4           (A) provide emergency drinking and mu-  
5       nicipal water supplies to localities in a quantity  
6       necessary to meet minimum public health and  
7       safety needs;

8           (B) prevent the loss of permanent crops;

9           (C) minimize economic losses resulting  
10       from drought conditions; or

11          (D) provide innovative water conservation  
12       tools and technology for agriculture and urban  
13       water use that can have immediate water sup-  
14       ply benefits.

15       (c) ACCELERATED PROJECT DECISION AND ELE-  
16       VATION.—

17           (1) IN GENERAL.—On request by the Governor  
18       of the State, the heads of Federal agencies shall use  
19       the expedited procedures under this subsection to  
20       make final decisions relating to a Federal project or  
21       operation if the purpose of the project or operation  
22       is to provide relief for emergency drought conditions  
23       pursuant to subsections (a) and (b).

24           (2) REQUEST FOR RESOLUTION.—



1 (A) IN GENERAL.—On request by the Gov-  
2 ernor of the State, the head of a Federal agen-  
3 cy referenced in paragraph (1), or the head of  
4 another Federal agency responsible for carrying  
5 out a review of a project, as applicable, the Sec-  
6 retary of the Interior shall convene a final  
7 project decision meeting with the heads of all  
8 relevant Federal agencies to decide whether to  
9 approve a project to provide relief for emer-  
10 gency drought conditions.

11 (B) MEETING.—The Secretary of the Inte-  
12 rior shall convene a meeting requested under  
13 subparagraph (A) not later than 7 days after  
14 the date on which the meeting request is re-  
15 ceived.

16 (3) NOTIFICATION.—On receipt of a request for  
17 a meeting under paragraph (2), the Secretary of the  
18 Interior shall notify the heads of all relevant Federal  
19 agencies of the request, including information on the  
20 project to be reviewed and the date of the meeting.

21 (4) DECISION.—Not later than 10 days after  
22 the date on which a meeting is requested under  
23 paragraph (2) and subject to subsection (e)(2), the  
24 head of the relevant Federal agency shall issue a  
25 final decision on the project.

1           (5) MEETING CONVENED BY SECRETARY.—The  
2       Secretary of the Interior may convene a final project  
3       decision meeting under this subsection at any time,  
4       at the discretion of the Secretary, regardless of  
5       whether a meeting is requested under paragraph (2).

6       (d) APPLICATION.—To the extent that a Federal  
7       agency, other than the agencies headed by the Secretaries,  
8       has a role in approving projects described in subsections  
9       (a) and (b), this section shall apply to those Federal agen-  
10      cies.

11      (e) LIMITATION.—Nothing in this section authorizes  
12      the heads of applicable Federal agencies to approve  
13      projects—

14           (1) that would otherwise require congressional  
15      authorization; or

16           (2) without following procedures required by  
17      applicable law.

18      (f) 2015 DROUGHT PLAN.—The Secretary of Com-  
19      merce and the Secretary of the Interior, in consultation  
20      with appropriate State officials, shall develop a drought  
21      operations plan for calendar year 2015 that is consistent  
22      with this section and other provisions of this Act intended  
23      to provide additional water supplies that could be of assist-  
24      ance during the drought in effect as of the date of enact-  
25      ment of this Act.

1   **SEC. 304. OPERATION OF CROSS-CHANNEL GATES.**

2           (a) IN GENERAL.—The Secretary of Commerce and  
3 the Secretary of the Interior shall jointly—

4           (1) authorize and implement activities to ensure  
5 that the Delta Cross Channel Gates remain open to  
6 the maximum extent practicable using findings from  
7 the United States Geological Survey on diurnal be-  
8 havior of juvenile salmonids, timed to maximize the  
9 peak flood tide period and provide water supply and  
10 water quality benefits for the duration of the  
11 drought emergency declaration of the State, con-  
12 sistent with operational criteria and monitoring cri-  
13 teria developed pursuant to the Order Approving a  
14 Temporary Urgency Change in License and Permit  
15 Terms in Response to Drought Conditions of the  
16 California State Water Resources Control Board, ef-  
17 fective January 31, 2014 (or a successor order) and  
18 other authorizations associated with that order;

19           (2) with respect to the operation of the Delta  
20 Cross Channel Gates described in paragraph (1),  
21 collect data on the impact of that operation on—

22           (A) species listed as threatened or endan-  
23 gered under the Endangered Species Act of  
24 1973 (16 U.S.C. 1531 et seq.);

25           (B) water quality; and

26           (C) water supply;

1           (3) consistent with knowledge gained from ac-  
2           tivities carried out during 2014, collaborate with the  
3           California Department of Water Resources to install  
4           a deflection barrier at Georgiana Slough in coordina-  
5           tion with Delta Cross Channel Gate diurnal oper-  
6           ations to protect migrating salmonids;

7           (4) evaluate the combined salmonid survival in  
8           light of activities carried out pursuant to paragraphs  
9           (1) through (3) in deciding how to operate the Delta  
10          Cross Channel gates to enhance salmonid survival  
11          and water supply benefits; and

12          (5) not later than May 15, 2015, submit to the  
13          Committee on Energy and Natural Resources of the  
14          Senate and the Committee on Natural Resources of  
15          the House of Representatives a written report on the  
16          extent to which the gates are able to remain open.

17          (b) RECOMMENDATIONS.—

18          (1) IN GENERAL.—After assessing the informa-  
19          tion collected under subsection (a), the Secretary of  
20          the Interior shall recommend revisions to the oper-  
21          ation of the Delta Cross-Channel Gates, to the Cen-  
22          tral Valley Project, and to the State Water Project,  
23          including, if appropriate, any reasonable and pru-  
24          dent alternatives contained in the biological opinion  
25          issued by the National Marine Fisheries Service on

1       June 4, 2009, that are likely to produce fishery,  
2       water quality, and water supply benefits.

3               (2) COORDINATION.—The Secretary of the In-  
4       terior shall coordinate with the State Water Re-  
5       sources Control Board to seek consistent direction  
6       for the operation of the Delta Cross-Channel Gates  
7       under Federal and State law, including Water Right  
8       Decision 1641.

9       **SEC. 305. FLEXIBILITY FOR EXPORT/INFLOW RATIO.**

10       In response to the declaration of a state of drought  
11       emergency by the Governor of the State and for the period  
12       of time such a drought declaration remains in effect, the  
13       Commissioner of the Bureau of Reclamation shall con-  
14       tinue to vary the averaging period of the Delta Export/  
15       Inflow ratio pursuant to the California State Water Re-  
16       sources Control Board decision D1641, approved in the  
17       March 2014 Temporary Urgency Change Order—

18               (1) to operate to a 35 percent Export/Inflow  
19       ratio with a 3 day averaging period on the rising  
20       limb of a Delta inflow hydrograph; and

21               (2) to operate to a 14 day averaging period on  
22       the falling limb of the Delta inflow hydrograph.

23       **SEC. 306. EMERGENCY ENVIRONMENTAL REVIEWS.**

24       To minimize the time spent carrying out environ-  
25       mental reviews and to deliver water quickly that is needed

1 to address emergency drought conditions in the State dur-  
2 ing the duration of an emergency drought declaration, the  
3 head of each applicable Federal agency shall, in carrying  
4 out this Act, consult with the Council on Environmental  
5 Quality in accordance with section 1506.11 of title 40,  
6 Code of Federal Regulations (including successor regula-  
7 tions), to develop alternative arrangements to comply with  
8 the National Environmental Policy Act of 1969 (42 U.S.C.  
9 4321 et seq.) during the emergency.

10 **SEC. 307. PRIORITIZING STATE REVOLVING FUNDS DURING**  
11 **DROUGHTS.**

12 (a) IN GENERAL.—This section shall apply for each  
13 of the fiscal years during which an emergency drought  
14 declaration of the State is in effect.

15 (b) ACTION BY ADMINISTRATOR.—The Adminis-  
16 trator of the Environmental Protection Agency, in imple-  
17 menting the processes and programs under the State  
18 water pollution control revolving funds established under  
19 title VI of the Federal Water Pollution Control Act (33  
20 U.S.C. 1381 et seq.) and the State drinking water treat-  
21 ment revolving loan funds established under section 1452  
22 of the Safe Drinking Water Act (42 U.S.C. 300j–12),  
23 shall, for those projects that are eligible to receive assist-  
24 ance under section 603 of the Federal Water Pollution

1 Control Act (33 U.S.C. 1383) or section 1452(a)(2) of the  
2 Safe Drinking Water Act (42 U.S.C. 300j–12(a)(2))—

3 (1) issue a determination of waivers within 30  
4 days of the conclusion of the informal public com-  
5 ment period pursuant to section 436(c) of title IV of  
6 division G of Public Law 113–76; and

7 (2) authorize, at the request of the State, 40-  
8 year financing for assistance under section  
9 603(d)(2) of the Federal Water Pollution Control  
10 Act (33 U.S.C. 1383(d)(2)) or section 1452(f)(2) of  
11 the Safe Drinking Water Act (42 U.S.C. 300j–  
12 12(f)(2)).

13 (c) EFFECT OF SECTION.—Nothing in this section  
14 authorizes the Administrator of the Environmental Pro-  
15 tection Agency to modify any funding allocation, funding  
16 criteria, or other requirement relating to State water pol-  
17 lution control revolving funds established under title VI  
18 of the Federal Water Pollution Control Act (33 U.S.C.  
19 1381 et seq.) and the State drinking water treatment re-  
20 volving loan funds established under section 1452 of the  
21 Safe Drinking Water Act (42 U.S.C. 300j–12) for any  
22 other State.

1   **SEC. 308. INCREASED FLEXIBILITY FOR REGULAR PROJECT**  
2                   **OPERATIONS.**

3           The Secretaries shall, consistent with applicable laws  
4 (including regulations)—

5               (1) to the maximum extent practicable, based  
6           on the availability of water and without causing land  
7           subsidence or violating water quality standards—

8                   (A) help meet the contract water supply  
9           needs of Central Valley Project refuges through  
10          the improvement or installation of water con-  
11          servation measures, water conveyance facilities,  
12          and wells to use groundwater resources, on the  
13          condition that those activities may only be ac-  
14          complished by using funding made available  
15          under the Water Assistance Program or the  
16          WaterSMART program of the Department of  
17          the Interior; and

18                  (B) make available to Central Valley  
19          Project contractors a quantity of Central Valley  
20          Project surface water obtained from the activi-  
21          ties carried out under subparagraph (A);

22               (2) contingent on funding, in coordination with  
23          the Secretary of Agriculture, enter into an agree-  
24          ment with the National Academy of Sciences to con-  
25          duct a comprehensive study, to be completed not  
26          later than 1 year after the date of enactment of this



1 Act, on the effectiveness and environmental impacts  
2 of saltcedar biological control efforts on increasing  
3 water supplies and improving riparian habitats of  
4 the Colorado River and its principal tributaries, in  
5 the State and elsewhere;

6 (3) in coordination with the California Depart-  
7 ment of Water Resources and the California Depart-  
8 ment of Fish and Wildlife, implement offsite up-  
9 stream projects in the Delta and upstream Sac-  
10 ramento River and San Joaquin basins that offset  
11 the effects on species listed as threatened or endan-  
12 gered under the Endangered Species Act of 1973  
13 (16 U.S.C. 1531 et seq.) due to activities carried out  
14 pursuant this Act, as determined by the Secretaries;

15 (4) manage reverse flow in the Old and Middle  
16 Rivers, as prescribed by the smelt biological opinion  
17 and salmonid biological opinion, or any successor bi-  
18 ological opinions, to minimize water supply reduc-  
19 tions for the Central Valley Project and the State  
20 Water Project, and issue guidance not later than  
21 December 31, 2015, directing the employees of those  
22 agencies to take all steps necessary to manage flow  
23 in accordance with this paragraph;

24 (5) as soon as practicable after the date of en-  
25 actment of this Act and pursuant to existing author-

1       ity available to the Secretary of the Interior, partici-  
2       pate in, issue grants, or otherwise provide funding  
3       for pilot projects to increase water in reservoirs in  
4       regional river basins experiencing extreme, excep-  
5       tional, or sustained drought that have a direct im-  
6       pact on the water supply of the State, including the  
7       Colorado River Basin, on the condition that any par-  
8       ticipation, grant, or funding by the Secretary of the  
9       Interior with respect to the Upper Division shall be  
10      with or to the respective State; and

11           (6) use all available scientific tools to identify  
12      any changes to real-time operations of the Bureau of  
13      Reclamation, State, and local water projects that  
14      could result in the availability of additional water  
15      supplies.

16   **SEC. 309. TEMPORARY OPERATIONAL FLEXIBILITY FOR**  
17           **FIRST FEW STORMS OF 2015 WATER YEAR.**

18      (a) FINDINGS.—Congress finds the following:

19           (1) During the 2014 water year operations of  
20      the Central Valley Project and the State Water  
21      Project, the incidental take of—

22                   (A) adult Delta smelt was zero;

23                   (B) juvenile Delta smelt was 78 (7.7 per-  
24      cent of the incidental take limit);

1 (C) winter run Chinook was 339 (1.4 per-  
2 cent of the incidental take limit);

3 (D) spring run Chinook was zero; and

4 (E) steelhead was 261 (8.7 percent of the  
5 incidental take limit).

6 (2) The Central Valley Project and State Water  
7 Project exceeded an Old and Middle River flow of  
8 5,000 cubic feet per second over a 14-day average  
9 for brief periods after 3-storm events in February  
10 and March 2014 as a result of increased pumping,  
11 but did not cause substantially increased take of  
12 smelt or salmon.

13 (3) Hydrological conditions in dry years, such  
14 as the 2014 water year, have not triggered water  
15 pumping restrictions pursuant to the smelt biological  
16 opinion.

17 (4) The Secretaries should be allowed more  
18 flexibility to increase pumping levels without causing  
19 significant risk to the listed species or weakening  
20 other environmental protections.

21 (5) Given the severe drought conditions in the  
22 State, significant groundwater withdrawals for irri-  
23 gation due to lack of surface water supplies, and the  
24 depletion of water supplies in reservoirs, it is imper-  
25 ative that the Secretaries exercise the flexibility pro-

1 vided in this section to capture the maximum quan-  
2 tity of storm flows when storm flows occur in the  
3 2015 water year, and provide for the diversion of  
4 those water supplies to the Central Valley Project  
5 and State Water Project so that agricultural oper-  
6 ations, businesses, and homes in drought-stricken  
7 areas will have an opportunity to bolster meager  
8 supplies of water when water is available.

9 (b) GOAL.—Consistent with avoiding additional ad-  
10 verse effects on listed fish species beyond the range of ad-  
11 verse effects authorized under the Endangered Species Act  
12 of 1973 (16 U.S.C. 1531 et seq.) and other environmental  
13 protections described in subsection (e), the Secretaries  
14 shall authorize the Central Valley Project and the State  
15 Water Project to operate at combined levels that result  
16 in Old and Middle River flows at up to a 7500 cubic  
17 feet per second (based on United States Geological Survey  
18 gauges on Old and Middle Rivers) daily average for up  
19 to 21 cumulative days after October 1, 2014, as described  
20 in subsection (c).

21 (c) DAYS OF TEMPORARY OPERATIONAL FLEXI-  
22 BILITY.—The temporary operational flexibility described  
23 in subsection (b) shall be authorized on days that the Cali-  
24 fornia Department of Water Resources determines the  
25 daily average river flow of the Sacramento River is at, or

1 above, 17,000 cubic feet per second, as measured at the  
2 Sacramento River at Freeport gauge maintained by the  
3 United States Geological Survey.

4 (d) COMPLIANCE WITH ENDANGERED SPECIES ACT  
5 AUTHORIZATIONS.—In carrying out this section, the Sec-  
6 retaries may continue to impose any requirements under  
7 the biological opinions during any period of temporary  
8 operational flexibility as the Secretaries determine are rea-  
9 sonably necessary to avoid additional adverse effects on  
10 listed fish species beyond the range of adverse effects au-  
11 thorized under the Endangered Species Act of 1973 (16  
12 U.S.C. 1531 et seq.).

13 (e) OTHER ENVIRONMENTAL PROTECTIONS.—

14 (1) IN GENERAL.—The actions of the Secre-  
15 taries under this section shall be consistent with ap-  
16 plicable regulatory requirements under State law, in-  
17 cluding State Water Resources Control Board Deci-  
18 sion 1641, as that decision may be implemented in  
19 any given year.

20 (2) ADJUSTED RATES ALLOWED.—During the  
21 first flush of sediment out of the Delta during the  
22 2015 water year, Old and Middle River flow may be  
23 managed at rates less negative than 5000 cubic  
24 feet per second for a minimum duration to avoid  
25 movement of adult Delta smelt to areas in the

1 southern Delta that would be likely to increase en-  
2 trainment at Central Valley Project and State Water  
3 Project pumping plants.

4 (3) SALMONID BIOLOGICAL OPINION.—This sec-  
5 tion shall not have any effect on the applicable re-  
6 quirements of the salmonid biological opinion during  
7 the period beginning on April 1, 2015 and ending  
8 May 31, 2015, unless the Secretary of Commerce  
9 finds that some or all of the applicable requirements  
10 may be adjusted during the time period to provide  
11 emergency water supply relief without resulting in  
12 additional adverse effects beyond the adverse effects  
13 authorized under the Endangered Species Act of  
14 1973 (16 U.S.C. 1531 et seq.).

15 (4) MONITORING AND DATA GATHERING.—Dur-  
16 ing the period in which operations are carried out  
17 under this section, the Commissioner of Reclama-  
18 tion, in coordination with the Director of the United  
19 States Fish and Wildlife Service, the Assistant Ad-  
20 ministrator of the National Marine Fisheries Serv-  
21 ice, and the head of the California Department of  
22 Fish and Wildlife, shall undertake a monitoring pro-  
23 gram and other data gathering to ensure take limits  
24 levels are not exceeded, and to identify potential ac-  
25 tions necessary to mitigate any impacts of the tem-

1       porary operational flexibility to species listed as  
2       threatened or endangered under the Endangered  
3       Species Act of 1973 (16 U.S.C. 1531 et seq.).

4               (5) MITIGATING IMPACTS.—The Commissioner  
5       of Reclamation may take any action, including the  
6       transfer of appropriated funds between accounts  
7       that, in the judgment of the Commissioner, is nec-  
8       essary to mitigate the impacts of the operations car-  
9       ried out under this section, on the condition that the  
10      mitigation is consistent with the requirements of this  
11      section.

12      (f) TECHNICAL ADJUSTMENTS TO TARGET PE-  
13      RIOD.—If, before temporary operational flexibility has  
14      been implemented on 21 cumulative days as described in  
15      subsection (b), the Secretaries operate the Central Valley  
16      Project and the State Water Project combined at levels  
17      that result in Old and Middle River flows less negative  
18      than 7500 cubic feet per second during days of tem-  
19      porary operational flexibility as defined in subsection (c),  
20      the duration of the operation shall not be counted toward  
21      the 21 cumulative days specified in subsection (b).

22      (g) EMERGENCY CONSULTATION; EFFECT ON RUN-  
23      NING AVERAGES.—

24               (1) IN GENERAL.—If necessary to implement  
25      this section, the Commissioner of Reclamation shall

1 use the emergency consultation procedures under the  
2 Endangered Species Act of 1973 (16 U.S.C. 1531 et  
3 seq.) (including the implementing regulations at sec-  
4 tion 402.05 of title 50, Code of Federal Regulations  
5 (or successor regulations)) to temporarily adjust the  
6 operating criteria under the biological opinions, sole-  
7 ly for the 21 days of temporary operational flexi-  
8 bility and—

9 (A) not more than necessary to achieve the  
10 purposes of this section consistent with the en-  
11 vironmental protections described in subsections  
12 (d) and (e); and

13 (B) including, as appropriate, adjustments  
14 to ensure that the actual flow rates during the  
15 periods of temporary operational flexibility do  
16 not count toward the 5-day and 14-day running  
17 averages of tidally filtered daily Old and Middle  
18 River flow requirements under the biological  
19 opinions.

20 (2) PROHIBITION.—Following the conclusion of  
21 the 21 days of temporary operational flexibility, the  
22 Commissioner of Reclamation shall not reinitiate  
23 consultation on the adjusted operations described in  
24 paragraph (1) if the effects on listed fish species of  
25 the operations under this section remain within the



1 range of the effects authorized under the Endan-  
2 gered Species Act of 1973 (16 U.S.C. 1531 et seq.).

3 (h) LEVEL OF DETAIL REQUIRED FOR ANALYSIS.—

4 In articulating the determinations required under this sec-  
5 tion, the Secretaries shall fully satisfy the requirements  
6 of this section but shall not be expected to provide a great-  
7 er level of supporting detail for the analysis than feasible  
8 to provide within the short timeframe permitted for timely  
9 decisionmaking in response to changing conditions in the  
10 Delta.

11 (i) DURATION.—The authority to carry out this sec-  
12 tion shall expire on September 30, 2015.

13 **SEC. 310. EXPEDITING WATER TRANSFERS.**

14 (a) IN GENERAL.—Section 3405(a) of the Central  
15 Valley Project Improvement Act (Public Law 102–575;  
16 106 Stat. 4709(a)) is amended—

17 (1) by redesignating paragraphs (1) through

18 (3) as paragraphs (4) through (6), respectively;

19 (2) in the matter preceding paragraph (4) (as  
20 so designated)—

21 (A) in the first sentence, by striking “In  
22 order to” and inserting the following:

23 “(1) IN GENERAL.—In order to”; and

1 (B) in the second sentence, by striking  
2 “Except as provided herein” and inserting the  
3 following:

4 “(3) TERMS.—Except as otherwise provided in  
5 this section”; and

6 (3) by inserting before paragraph (3) (as so  
7 designated) the following:

8 “(2) EXPEDITED TRANSFER OF WATER.—The  
9 Secretary shall take all necessary actions to facilitate  
10 and expedite transfers of Central Valley Project  
11 water in accordance with—

12 “(A) this Act;

13 “(B) any other applicable provision of the  
14 reclamation laws; and

15 “(C) the National Environmental Policy  
16 Act of 1969 (42 U.S.C. 4321 et seq.).”;

17 (4) in paragraph (4) (as so designated)—

18 (A) in subparagraph (A), by striking “to  
19 combination” and inserting “or combination”;  
20 and

21 (B) by striking “3405(a)(2) of this title”  
22 each place it appears and inserting “(5)”;

23 (5) in paragraph (5) (as so designated), by add-  
24 ing at the end the following:

1           “(E) The contracting district from which  
2           the water is coming, the agency, or the Sec-  
3           retary shall determine if a written transfer pro-  
4           posal is complete within 45 days after the date  
5           of submission of the proposal. If the contracting  
6           district or agency or the Secretary determines  
7           that the proposal is incomplete, the district or  
8           agency or the Secretary shall state with speci-  
9           ficity what must be added to or revised for the  
10          proposal to be complete.”; and

11          (6) in paragraph (6) (as so designated), by  
12          striking “3405(a)(1)(A)-(C), (E), (G), (H), (I), (L),  
13          and (M) of this title” and inserting “(A) through  
14          (C), (E), (G), (H), (I), (L), and (M) of paragraph  
15          (4)”.

16          (b) CONFORMING AMENDMENTS.—The Central Val-  
17          ley Project Improvement Act (Public Law 102–575) is  
18          amended—

19               (1) in section 3407(c)(1) (106 Stat. 4726), by  
20          striking       “3405(a)(1)(C)”       and       inserting  
21          “3405(a)(4)(C)”;

22               (2) in section 3408(i)(1) (106 Stat. 4729), by  
23          striking “3405(a)(1) (A) and (J) of this title” and  
24          inserting “subparagraphs (A) and (J) of section  
25          3405(a)(4)”.

1   **SEC. 311. WARREN ACT CONTRACTS.**

2           [To be supplied.]

3   **SEC. 312. ADDITIONAL WARREN ACT CONTRACTS.**

4           [To be supplied.]

5   **TITLE IV—INCREASING WATER**  
6           **STORAGE**

7   **SEC. 401. FINDINGS.**

8           Congress finds that—

9                   (1) the record drought conditions being experi-  
10           enced in the State as of the date of enactment of  
11           this Act are—

12                           (A) expected to recur in the future; and

13                           (B) likely to do so with increasing fre-  
14           quency;

15                   (2) water storage is an indispensable and inte-  
16           gral part of any solution to address the long-term  
17           water challenges of the State;

18                   (3) Congress authorized relevant feasibility  
19           studies for 4 water storage projects in the State, in-  
20           cluding projects for—

21                           (A) enlargement of Shasta Dam in Shasta  
22           County under section 2(a) of Public Law 96–  
23           375 (94 Stat. 1506), as reaffirmed under sec-  
24           tion 103(d)(1)(A)(i)(I) of the Calfed Bay-Delta  
25           Authorization Act (Public Law 108–361; 118  
26           Stat. 1684);

1 (B) enlargement of Los Vaqueros Res-  
2 ervoir in Contra Costa County under section  
3 215 of Public Law 108–7 (117 Stat. 147), as  
4 reaffirmed under section 103(d)(1)(A)(i)(II) of  
5 the Calfed Bay-Delta Authorization Act (Public  
6 Law 108–361; 118 Stat. 1684);

7 (C) construction of North-of-Delta  
8 Offstream Storage (Sites Reservoir) in Colusa  
9 County under section 215 of Public Law 108–  
10 7 (117 Stat. 147), as reaffirmed under section  
11 103(d)(1)(A)(ii)(I) of the Calfed Bay-Delta Au-  
12 thorization Act (Public Law 108–361; 118 Stat.  
13 1684); and

14 (D) construction of the Upper San Joaquin  
15 River storage (Temperance Flat) in Fresno and  
16 Madera Counties under section 215 of Public  
17 Law 108–7 (117 Stat. 147), as reaffirmed  
18 under section 103(d)(1)(A)(ii)(II) of the Calfed  
19 Bay-Delta Authorization Act (Public Law 108–  
20 361; 118 Stat. 1684);

21 (4)(A) as of the date of enactment of this Act,  
22 it has been more than 10 years since the authoriza-  
23 tion of the feasibility studies referred to in para-  
24 graph (3); but

1 (B) complete and final feasibility studies have  
2 not been prepared for any of those water storage  
3 projects;

4 (5) as of August 2014, only 2 of the 4 projects  
5 referred to in paragraph (3) have completed draft  
6 feasibility studies;

7 (6) the slow pace of work on completion of the  
8 feasibility studies for those 4 water storage projects  
9 is—

10 (A) unjustified; and

11 (B) of deep concern; and

12 (7) there is significant public interest in, and  
13 urgency with respect to, completing all feasibility  
14 studies and environmental reviews for the water  
15 storage projects referred to in paragraph (3), given  
16 the critical need for that infrastructure to address  
17 the water challenges of the State.

18 **SEC. 402. CALFED STORAGE FEASIBILITY STUDIES.**

19 (a) IN GENERAL.—Notwithstanding subparagraph  
20 (B)(i) of section 103(d)(1) of the Calfed Bay-Delta Au-  
21 thorization Act (Public Law 108–361; 118 Stat. 1684),  
22 the Secretary of the Interior, acting through the Commis-  
23 sioner of Reclamation (referred to in this title as the “Sec-  
24 retary”), shall complete a final feasibility study and any

1 other applicable environmental review documents for the  
2 project described in—

3 (1) subparagraph (A)(i)(I) of that section by  
4 not later than December 31, 2014; and

5 (2) subparagraph (A)(ii)(II) of that section by  
6 not later than July 31, 2015.

7 (b) ENVIRONMENTAL REVIEWS.—In carrying out  
8 subsection (a), the Secretary—

9 (1) shall ensure that—

10 (A) all applicable reviews, including re-  
11 views required under the National Environ-  
12 mental Policy Act of 1969 (42 U.S.C. 4321 et  
13 seq.), are completed as expeditiously as prac-  
14 ticable; and

15 (B) the shortest applicable process under  
16 that Act is used, including in the completion  
17 of—

18 (i) feasibility studies;

19 (ii) draft environmental impact state-  
20 ments; and

21 (iii) final environmental impact state-  
22 ments; and

23 (2) shall not be required to complete a draft or  
24 final environmental impact statement if the Commis-  
25 sioner of Reclamation determines, and the Secretary

1 concurs, that the project fails to meet applicable  
2 Federal cost-benefit requirements or standards.

3 (c) ACCOUNTABILITY.—

4 (1) IN GENERAL.—If the Secretary determines  
5 that an environmental review document for the  
6 water storage projects referred to in section  
7 103(d)(1) of the Calfed Bay-Delta Authorization Act  
8 (Public Law 108–361; 118 Stat. 1684) will not be  
9 completed according to the schedule specified in sub-  
10 section (a), not later than 14 days after the deter-  
11 mination, the Secretary shall notify the Committee  
12 on Energy and Natural Resources and the Sub-  
13 committee on Energy and Water Development of the  
14 Committee on Appropriations of the Senate, and the  
15 Committee on Transportation and Infrastructure of  
16 the House of Representatives.

17 (2) INCLUSIONS.—The notification shall in-  
18 clude—

19 (A) an explanation of the delay;

20 (B) the anticipated length of the delay and  
21 the revised completion date; and

22 (C) the steps that the Secretary will take  
23 to mitigate the delay, including, at a minimum,  
24 a request to reprogram existing funds appro-



1            priated to the Secretary to meet the revised  
2            completion deadline.

3            (d) REQUIREMENT.—The Secretary shall carry out  
4 the procedures described in subsection (c) for each subse-  
5 quent delay beyond the revised completion deadline.

6 **SEC. 403. WATER STORAGE PROJECT CONSTRUCTION.**

7            (a) IN GENERAL.—The Secretary may partner or  
8 enter into an agreement on the water storage projects  
9 identified in section 103(d)(1) of the Calfed Bay-Delta  
10 Authorization Act (Public Law 108–361; 118 Stat. 1684)  
11 (and Acts supplemental and amendatory to the Act) with  
12 local joint powers authorities formed pursuant to State  
13 law by irrigation districts and other local water districts  
14 and local governments within the applicable hydrologic re-  
15 gion, to advance those projects.

16            [(b) Placeholder – authorization issue.]

17 **SEC. 404. OTHER STORAGE FEASIBILITY STUDIES.**

18            (a) DEFINITION OF QUALIFYING PROJECT.—In this  
19 section, the term “qualifying project” means any new sur-  
20 face water storage project constructed on land adminis-  
21 tered by the Department of the Interior in a State in  
22 which the Bureau of Reclamation has jurisdiction, but ex-  
23 cluding any easement, right-of-way, lease, or private hold-  
24 ing located on such land.

25            (b) LEAD AGENCY.—

1           (1) QUALIFYING PROJECTS WITHIN JURISDIC-  
2           TION OF BUREAU OF RECLAMATION.—The Bureau  
3           of Reclamation shall serve as the lead agency for  
4           purposes of coordinating all reviews, analyses, opin-  
5           ions, statements, permits, licenses, and other ap-  
6           provals or decisions required under Federal law (in-  
7           cluding regulations) to construct qualifying projects  
8           within the jurisdiction of the Bureau.

9           (2) QUALIFYING PROJECTS OUTSIDE JURISDIC-  
10          TION OF BUREAU OF RECLAMATION.—If the site of  
11          a qualifying project is not located in a State in  
12          which the Bureau of Reclamation has jurisdiction,  
13          the Secretary shall, by not later than 45 days after  
14          the date of receipt of an application for the quali-  
15          fying project—

16                (A) designate an alternate agency within  
17                the Department of the Interior to serve as the  
18                lead agency for purposes of coordinating all re-  
19                views, analyses, opinions, statements, permits,  
20                licenses, and other approvals or decisions re-  
21                quired under Federal law (including regula-  
22                tions) to construct the qualifying project; or

23                (B) in consultation with the heads of other  
24                Federal departments and agencies, identify the

1 appropriate lead agency for the qualifying  
2 project.

3 (c) COOPERATING AGENCIES.—

4 (1) FEDERAL DEPARTMENTS AND AGENCIES.—

5 The lead agency designated under paragraph (1) or  
6 (2) of subsection (b) shall—

7 (A) as soon as practicable after receipt of  
8 an application for a qualifying project, identify  
9 any Federal department or agency that may  
10 have jurisdiction over a review, permit, license,  
11 approval, or decision required for the qualifying  
12 project under applicable Federal laws (including  
13 regulations); and

14 (B) as soon as practicable after the date of  
15 identification under subparagraph (A)—

16 (i) notify each applicable department  
17 or agency of the identification; and

18 (ii) designate the department or agen-  
19 cy as a cooperating agency, unless the de-  
20 partment or agency—

21 (I) has no jurisdiction or author-  
22 ity with respect to the qualifying  
23 project;

24 (II) has no expertise or informa-  
25 tion relevant to the qualifying project

1 or any review, permit, license, ap-  
2 proval, or decision associated with the  
3 qualifying project; or

4 (III) does not intend—

5 (aa) to submit comments re-  
6 garding the qualifying project; or

7 (bb) to conduct any review  
8 of the qualifying project or make  
9 any decision with respect to the  
10 qualifying project in a manner  
11 other than in cooperation with  
12 the Bureau of Reclamation.

13 (2) STATES.—A State in which a qualifying  
14 project is proposed to be carried out may elect, con-  
15 sistent with Federal and State law, to participate as  
16 a cooperating agency, if the lead agency designated  
17 for the proposed qualifying project under paragraph  
18 (1) or (2) of subsection (b) determines that the ap-  
19 plicable agency of the State—

20 (A) has jurisdiction over the qualifying  
21 project under applicable Federal or State law;

22 (B) is required to conduct or issue a review  
23 of the qualifying project; and

1 (C) is required to make a determination  
2 regarding issuing a permit, license, or approval  
3 of the qualifying project.

4 (d) DUTIES OF LEAD AGENCY.—

5 (1) IN GENERAL.—Not later than 30 days after  
6 the date of receipt of an application for approval of  
7 a qualifying project, the lead agency shall hold a  
8 meeting among the applicant, the lead agency, and  
9 all cooperating agencies to establish, with respect to  
10 the qualifying project, all applicable—

11 (A) requirements;

12 (B) review processes; and

13 (C) stakeholder responsibilities.

14 (2) SCHEDULE.—

15 (A) ESTABLISHMENT.—Not later than 30  
16 days after the date of the meeting under para-  
17 graph (1), the lead agency, in consultation with  
18 the attendees of the meeting, shall establish a  
19 schedule for completion of the qualifying  
20 project, taking into consideration, among other  
21 relevant factors—

22 (i) the responsibilities of cooperating  
23 agencies under applicable laws and regula-  
24 tions;

1 (ii) the resources available to the co-  
2 operating agencies and non-Federal project  
3 stakeholders;

4 (iii) the overall size and complexity of  
5 the qualifying project;

6 (iv) the overall schedule for, and cost  
7 of, the qualifying project; and

8 (v) the sensitivity of the natural and  
9 historic resources that may be affected by  
10 the qualifying project.

11 (B) REQUIREMENTS.—On establishment of  
12 a schedule for a qualifying project under sub-  
13 paragraph (A), the lead and cooperating agen-  
14 cies shall—

15 (i) to the maximum extent practicable,  
16 adhere to the schedule; and

17 (ii) submit to the Committee on Envi-  
18 ronment and Public Works of the Senate  
19 and the Committee on Natural Resources  
20 of the House of Representatives on a semi-  
21 annual basis a report describing any delays  
22 in the schedule, including a description  
23 of—

24 (I) the reasons for the delay;

1 (II) the actions that the lead and  
2 cooperating agencies will take to mini-  
3 mize the delay; and

4 (III) a revised schedule for the  
5 qualifying project, if applicable.

6 (e) ENVIRONMENTAL REVIEWS.—

7 (1) SINGLE, UNIFIED ENVIRONMENTAL REVIEW  
8 DOCUMENT.—

9 (A) IN GENERAL.—The lead agency with  
10 respect to a qualifying project, in consultation  
11 with appropriate stakeholders and cooperating  
12 agencies, shall determine whether a single, uni-  
13 fied environmental review document relating to  
14 the qualifying project is sufficient to comply  
15 with applicable Federal laws (including regula-  
16 tions), including the National Environmental  
17 Policy Act of 1969 (42 U.S.C. 4321 et seq.).

18 (B) ACTION ON DECLINATION.—If, after  
19 consultation under subparagraph (A), a lead  
20 agency determines not to adopt a single, unified  
21 environmental review document relating to a  
22 qualifying project—

23 (i) the lead agency shall—

24 (I) document the reasons for the  
25 determination; and

1 (II) submit to the Secretary a re-  
2 port describing those reasons; and  
3 (ii) the Secretary may require the  
4 adoption of a single, unified document at  
5 the discretion of the Secretary, based on  
6 good cause.

7 (2) ENVIRONMENTAL ASSESSMENT.—Except as  
8 provided in paragraph (4), if the lead agency with  
9 respect to a qualifying project, in consultation with  
10 cooperating agencies, determines that an environ-  
11 mental assessment is sufficient to comply with the  
12 requirements of this subsection and other applicable  
13 Federal laws (including regulations)—

14 (A) the public comment period for a draft  
15 environmental assessment shall be not more  
16 than 60 days after the date of publication in  
17 the Federal Register of notice of the public  
18 issuance of that draft; and

19 (B) the lead agency shall issue the final  
20 environmental assessment by not later than 180  
21 days after the end of the period for public com-  
22 ments on the draft environmental assessment.

23 (3) ENVIRONMENTAL IMPACT STATEMENT.—  
24 Except as provided in paragraph (4), if the lead  
25 agency with respect to a qualifying project, in con-



1 sultation with cooperating agencies, determines that  
2 an environmental impact statement is required to  
3 comply with the requirements of this subsection and  
4 other applicable Federal laws (including regula-  
5 tions)—

6 (A) the public comment period for a draft  
7 environmental impact statement shall be not  
8 more than 60 days after the date of publication  
9 in the Federal Register of notice of the public  
10 issuance of that draft; and

11 (B) the lead agency shall issue the final  
12 environmental impact statement by not later  
13 than 1 year after the end of the period for pub-  
14 lic comments on the draft environmental assess-  
15 ment.

16 (4) MODIFICATION OF SCHEDULE.—

17 (A) IN GENERAL.—In carrying out para-  
18 graphs (2) and (3), the lead agency with re-  
19 spect to a qualifying project may modify the  
20 schedule of the qualifying project if—

21 (i)(I) the lead agency can demonstrate  
22 good cause, such as the need for additional  
23 time to comply with other statutory or reg-  
24 ulatory requirements (other than the Na-

1 tional Environmental Policy Act of 1969  
2 (42 U.S.C. 4321 et seq.)); and

3 (II) the head of the lead agency sub-  
4 mits to Congress a written determination  
5 describing the cause and reasons for the  
6 modification by not later than 30 days be-  
7 fore the original scheduled deadline; or

8 (ii) the lead agency, the project spon-  
9 sor, the joint lead agency (if applicable),  
10 and all participating and cooperating agen-  
11 cies agree to the modification.

12 (B) LIMITATION.—Unless the require-  
13 ments of clause (i) or (ii) of subparagraph (A)  
14 are met, no modification under subparagraph  
15 (A) shall result in the postponement of the  
16 issuance of—

17 (i) a final environmental assessment  
18 by more than 1 year; or

19 (ii) a final environmental impact  
20 statement by more than 2 years.

21 (C) REVISED SCHEDULE.—If a modifica-  
22 tion is made pursuant to this paragraph, the  
23 lead agency shall publish and adhere to the ap-  
24 plicable revised schedule, except as provided in  
25 clause (i) or (ii) of subparagraph (A).

1           (5) REQUIREMENTS.—On commencement of the  
2           environmental review process under this subsection,  
3           the lead and cooperating agencies shall, as soon as  
4           practicable—

5                   (A) make available to all stakeholders of  
6           the qualifying project information regarding—

7                           (i) the environmental and socio-  
8                           economic resources located within the area  
9                           of the qualifying project; and

10                          (ii) the general locations of the alter-  
11                          natives under consideration; and

12                   (B) identify any issues of concern regard-  
13           ing the potential environmental or socio-  
14           economic effects of the qualifying project, in-  
15           cluding any issues that could substantially delay  
16           or prevent an agency from granting a permit or  
17           other approval that is needed for a study relat-  
18           ing to the qualifying project.

19           (f) CONCURRENT REVIEW ACTIONS.—

20                   (1) IN GENERAL.—Any review, analysis, permit,  
21           license, approval, or decision regarding a qualifying  
22           project made by a Federal, State, or local govern-  
23           ment agency shall be—

1 (A) conducted, to the maximum extent  
2 practicable, concurrently with any other appli-  
3 cable government agency; and

4 (B) incorporated in the schedule for the  
5 qualifying project under subsection (d)(2).

6 (2) REQUIREMENT.—The lead and cooperating  
7 agencies for a qualifying project shall formulate and  
8 implement administrative, policy, and procedural  
9 mechanisms to enable adherence to the schedule for  
10 the qualifying project in a timely, coordinated, and  
11 environmentally responsible manner.

12 (3) GUIDANCE.—The Secretary shall issue  
13 guidance regarding the use of programmatic ap-  
14 proaches to carry out the environmental review proc-  
15 ess that, to the maximum extent practicable—

16 (A) eliminates repetitive discussions of the  
17 same issues;

18 (B) focuses on the actual issues ripe for  
19 analysis at each level of review;

20 (C) establishes a formal process for coordi-  
21 nating with participating and cooperating agen-  
22 cies, including the establishment of a list of all  
23 data required to carry out an environmental re-  
24 view process; and

1 (D) complies with the National Environ-  
2 mental Policy Act of 1969 (42 U.S.C. 4321 et  
3 seq.) and all other applicable laws and regula-  
4 tions.

5 (g) ADMINISTRATIVE RECORD AND DATA MANAGE-  
6 MENT.—

7 (1) IN GENERAL.—The lead agency shall—

8 (A) be responsible for compiling the ad-  
9 ministrative record of the information used as  
10 the basis for decisions relating to a qualifying  
11 project; and

12 (B) to the maximum extent practicable and  
13 consistent with Federal law, make available all  
14 data regarding the qualifying project in a for-  
15 mat that is accessible via electronic means for  
16 project stakeholders, cooperating agencies, and  
17 the public.

18 (2) REPORTS.—Not less frequently than once  
19 each year, the lead agency shall submit a progress  
20 report regarding a qualifying project to project  
21 stakeholders, cooperating agencies, the Committee  
22 on Environment and Public Works of the Senate,  
23 and the Committee on Natural Resources of the  
24 House of Representatives.

1 (h) PARTICIPATION BY NON-FEDERAL PROJECT  
2 SPONSORS.—

3 (1) APPLICATION TO SERVE AS COOPERATING  
4 AGENCY.—A non-Federal sponsor of a qualifying  
5 project may submit to the lead Secretary an applica-  
6 tion to serve as a cooperating agency of the quali-  
7 fying project for purposes of preparing any nec-  
8 essary documents relating to the qualifying project,  
9 including an environmental review, if—

10 (A) the non-Federal sponsor is a public  
11 agency as defined under the laws of the State  
12 in which the non-Federal sponsor is located;

13 (B) the non-Federal sponsor agrees to ad-  
14 here to—

15 (i) all required Federal laws (includ-  
16 ing regulations) in carrying out the quali-  
17 fying project; and

18 (ii) all decisions regarding the quali-  
19 fying project that have been agreed on by  
20 other stakeholders of the qualifying  
21 project; and

22 (C) the applicable lead agency certifies  
23 that participation by the non-Federal sponsor  
24 will not inappropriately bias the qualifying  
25 project in favor of the non-Federal sponsor.

1           (2) FUNDS.—Any funds contributed by a non-  
2       Federal sponsor to a qualifying project—

3           (A) may be accepted to maintain or accel-  
4       erate progress on the qualifying project, subject  
5       to the condition that the Secretary shall—

6           (i) review the use of the funds; and

7           (ii) certify in writing that the funds—

8           (I) are used solely to complete  
9       applicable environmental reviews; and

10          (II) do not unduly influence any  
11       permit or approval decision regarding  
12       the qualifying project; and

13          (B) shall be applied toward the non-Fed-  
14       eral cost-share of the qualifying project.

15       (i) APPLICABILITY TO CALFED STORAGE STUDIES.—

16   For any feasibility study referred to in section 401(3), this  
17   section shall apply to all activities to be carried out under  
18   the study on or after the date of enactment of this Act  
19   that would lead to congressional authorization of an appli-  
20   cable project for construction.

21   **SEC. 405. DAM SAFETY PROJECTS WITH INCREASED STOR-**  
22       **AGE COMPONENT.**

23       (a) ADDITIONAL PROJECT BENEFITS.—The Rec-  
24   lamation Safety of Dams Act of 1978 is amended—

1 (1) in section 3 (43 U.S.C. 507), by striking  
2 “Construction” and inserting “Except as provided in  
3 section 5B, construction”; and

4 (2) by inserting after section 5A (43 U.S.C.  
5 509a) the following:

6 **“SEC. 5B. ADDITIONAL PROJECT BENEFITS.**

7 “(a) IN GENERAL.—Notwithstanding section 3, if the  
8 Secretary, in the judgment of the Secretary, makes a de-  
9 termination described in subsection (b), the Secretary may  
10 develop any additional project benefit—

11 “(1) through the construction of new or supple-  
12 mentary works on a project in conjunction with the  
13 activities carried out by the Secretary pursuant to  
14 section 2; and

15 “(2) subject to the conditions described in the  
16 feasibility study relating to the project.

17 “(b) DESCRIPTION OF DETERMINATION.—A deter-  
18 mination referred to in subsection (a) is a determination  
19 by the Secretary that—

20 “(1) an additional project benefit, including ad-  
21 ditional conservation storage capacity, is—

22 “(A) necessary; and

23 “(B) in the interests of the United States;

24 and



1           “(2) the project benefit proposed to be carried  
2           out is—

3                   “(A) feasible; and

4                   “(B) not inconsistent with the purposes of  
5           this Act.

6           “(c) REQUIREMENTS.—The costs associated with de-  
7           veloping an additional project benefit under this section  
8           shall be—

9                   “(1) allocated among each entity that receives  
10          a benefit from the additional conservation storage  
11          capacity, subject to an agreement between the State  
12          and Federal funding agencies regarding those alloca-  
13          tions; and

14                  “(2) repaid in accordance with all applicable  
15          provisions of Federal reclamation law (the Act of  
16          June 17, 1902 (32 Stat. 388, chapter 1093), and  
17          Acts supplemental to and amendatory of that Act  
18          (43 U.S.C. 371 et seq.).”.

19          (b) SAN LUIS RESERVOIR EXPANSION.—Section  
20          103(f)(1)(A) of the Calfed Bay-Delta Authorization Act  
21          (Public Law 108–361; 118 Stat. 1694) is amended—

22                  (1) by striking “Funds” and inserting the fol-  
23          lowing:

24                          “(i) IN GENERAL.—Funds”; and

25                  (2) by adding at the end the following:

1 “(ii) ENVIRONMENTAL REVIEWS AND  
2 FEASIBILITY STUDY.—The Commissioner  
3 of Reclamation shall submit to Congress—

4 “(I) an expansion draft environ-  
5 mental impact statement and feasi-  
6 bility study relating to the San Luis  
7 Reservoir by not later than April 1,  
8 2016; and

9 “(II) a final environmental im-  
10 pact statement relating to the San  
11 Luis Reservoir by not later than De-  
12 cember 31, 2016.”.

13 **SEC. 406. UPDATING WATER OPERATIONS MANUALS FOR**  
14 **NON-FEDERAL PROJECTS.**

15 (a) DEFINITIONS.—In this section:

16 (1) NON-FEDERAL PROJECT.—

17 (A) IN GENERAL.—The term “non-Federal  
18 project” means a non-Federal reservoir project  
19 operated for flood control in accordance with  
20 rules prescribed by the Secretary pursuant to  
21 section 7 of the Act of December 22, 1944  
22 (commonly known as the “Flood Control Act of  
23 1944”) (58 Stat. 890, chapter 665).

1 (B) EXCLUSION.—The term “non-Federal  
2 project” does not include any dam or reservoir  
3 owned by—

- 4 (i) the Bureau of Reclamation; or  
5 (ii) the Corps of Engineers.

6 (2) OWNER.—The term “owner” with respect  
7 to a non-Federal project, does not include—

8 (A) the Secretary;

9 (B) the Secretary of the Interior; or

10 (C) the head of any other Federal depart-  
11 ment or agency, notwithstanding any Federal  
12 monetary contribution made toward the con-  
13 struction cost of the relevant non-Federal  
14 project, if the contribution is predicated a on  
15 flood control or other specific benefit.

16 (3) SECRETARY.—The term “Secretary” means  
17 the Secretary of the Army.

18 (b) REVIEW BY SECRETARY.—

19 (1) IN GENERAL.—Not later than 1 year after  
20 the date of receipt of a request from the owner of  
21 a non-Federal project, the Secretary, in consultation  
22 with the owner, shall review the water control man-  
23 ual and flood control rule curves and any operational  
24 or structural modifications proposed by the owner,  
25 including the use of improved weather forecasting

1 and run-off forecasting methods, to enhance the ex-  
2 isting purposes of the non-Federal project.

3 (2) REPORT.—Not later than 90 days after the  
4 date of completion of a review under paragraph (1),  
5 the Secretary shall submit to the owner of the appli-  
6 cable non-Federal project a report describing the re-  
7 sults of the review.

8 (3) PRIORITY.—In carrying out of this sub-  
9 section, the Secretary shall give priority to review  
10 and revision of water control manuals and flood con-  
11 trol rule curves for any non-Federal project—

12 (A) that is located in a State in which a  
13 drought emergency has been declared during  
14 the 1-year period ending on the date of review  
15 by the Secretary;

16 (B) the owner of which has submitted to  
17 the Secretary a formal request to review or re-  
18 vise the operations manual or rule curves to ac-  
19 commodate new watershed data or proposed  
20 project modifications or operational changes;

21 (C) the water control manual and  
22 hydrometeorological information establishing  
23 the flood control rule curves of which have not  
24 been revised during the 20-year period ending  
25 on the date of review by the Secretary;

1 (D) with respect to which a completed  
2 probable maximum flood analysis or other data  
3 indicates that revisions of the project control  
4 manual or rule curves are likely to enhance  
5 water supply benefits and flood control oper-  
6 ations; and

7 (E) modifications or operational changes  
8 proposed by the owner of which are likely to en-  
9 hance water supply benefits and flood control  
10 operations.

11 (4) NON-FEDERAL CONTRIBUTIONS.—The Sec-  
12 retary may accept non-Federal funds for all or a  
13 portion of the cost of carrying out a review or revi-  
14 sion of water control manuals and rule curves for  
15 non-Federal projects under this subsection.

16 **SEC. 407. CENTRAL VALLEY PROJECT.**

17 (a) COOPERATIVE AGREEMENTS.—

18 (1) IN GENERAL.—Not later than 180 days  
19 after the date of enactment of this Act, to determine  
20 the feasibility of an agreement for long-term use of  
21 an existing or expanded non-Federal storage or con-  
22 veyance facility to augment Federal water supply,  
23 ecosystem, and operational flexibility benefits, the  
24 Secretary shall offer to enter into cooperative agree-

1       ments with non-Federal entities to provide replace-  
2       ment water supplies for drought relief for—

3               (A) contractors of the Central Valley  
4       Project (as defined in section 3403 of the Cen-  
5       tral Valley Project Improvement Act (Public  
6       Law 102–575; 106 Stat. 4706));

7               (B) units of the National Wildlife Refuge  
8       System;

9               (C) State wildlife areas; and

10              (D) private wetland areas.

11              (2) REQUIREMENTS.—A cooperative agreement  
12       under this subsection shall—

13              (A) include the purchase of storage capac-  
14       ity in non-Federal facilities from willing sellers;  
15       and

16              (B) provide reimbursement for the tem-  
17       porary use of available capacity in existing  
18       above-ground, off-stream storage and associated  
19       conveyance facilities owned by local water agen-  
20       cies.

21              (b) REPORT.—Not later than 2 years after the date  
22       of enactment of this Act, the Secretary shall submit to  
23       the Chief of the National Wildlife Refuge System and con-  
24       tractors of the Central Valley Project a report describing

1 the feasibility of the agreement for long-term use de-  
2 scribed in subsection (a)(1).

## 3 **TITLE V—WATER RIGHTS** 4 **PROTECTIONS**

### 5 **SEC. 501. PROTECTIONS FOR STATE WATER PROJECT CON-** 6 **TRACTORS.**

7 (a) IN GENERAL.—If, as a result of the application  
8 of this Act, the California Department of Fish and Wild-  
9 life makes an election described in subsection (b), the  
10 water supply benefits resulting from the election that ac-  
11 crue to the Central Valley Project, if any, shall be shared  
12 equally with the State Water Project.

13 (b) DESCRIPTION OF ELECTIONS.—An election re-  
14 ferred to in subsection (a) is an election—

15 (1) to revoke the consistency determination pur-  
16 suant to section 2080.1 of the California Fish and  
17 Game Code;

18 (2) to amend or issue a new consistency deter-  
19 mination pursuant to that section of the California  
20 Fish and Game Code in a manner that results in re-  
21 duced water supply to the State Water Project, as  
22 compared to the water supply available under the  
23 smelt biological opinion and the salmonid biological  
24 opinion; or

1           (3) to require an authorization for taking under  
2           section 2081 of the California Fish and Game Code  
3           for the operation of the State Water Project in a  
4           manner that results in reduced water supply to the  
5           State Water Project, as compared to the water sup-  
6           ply available under the smelt biological opinion and  
7           the salmonid biological opinion.

8   **SEC. 502. AREA OF ORIGIN PROTECTIONS.**

9           (a) REQUIREMENT.—With respect to the operation of  
10          the Central Valley Project (as defined in section 302), the  
11          Secretary of the Interior shall adhere to the water rights  
12          laws of the State governing water rights priorities by hon-  
13          oring water rights senior to those held by the United  
14          States for operation of the Central Valley Project, regard-  
15          less of the source of priority, including—

16               (1) any appropriative water right initiated prior  
17               to December 19, 1914; and

18               (2) any water right or other priority perfected,  
19               or expected to be perfected, pursuant to part 2 of  
20               division 2, article 1.7 (beginning with section 1215  
21               of chapter 1 of part 2 of division 2, sections 10505,  
22               10505.5, 11128, 11460, 11461, 11462, and 11463,  
23               and sections 12200 to 12220) of the California  
24               Water Code.



1 (b) ACTIONS UNDER ESA.—Any action carried out  
2 by the Secretary of the Interior or the Secretary of Com-  
3 merce pursuant to section 7 of the Endangered Species  
4 Act of 1973 (16 U.S.C. 1536) that requires a diversion  
5 to be bypassed, or that involves the release of water from  
6 any Central Valley Project water storage facility, shall be  
7 carried out in accordance with the water rights priorities  
8 established by law in the State.

9 **SEC. 503. NO REDIRECTED ADVERSE IMPACTS.**

10 The Secretary of the Interior shall ensure that, ex-  
11 cept as otherwise provided for in a water service or repay-  
12 ment contract, an action carried out in compliance with  
13 a legal obligation imposed pursuant to, or as a result of,  
14 this Act, including such an action under the Endangered  
15 Species Act of 1973 (16 U.S.C. 1531 et seq.) or any other  
16 Federal law (including regulations), shall not cause a redi-  
17 rected adverse water supply or an adverse fiscal impact  
18 to any individual or entity within the boundaries of the  
19 Sacramento River watershed or the State Water Project.

20 **SEC. 504. EFFECT ON STATE LAWS.**

21 Nothing in this Act preempts any State law in effect  
22 on the date of enactment of this Act, including area of  
23 origin and other water rights protections.

1       **TITLE VI—MISCELLANEOUS**

2       **SEC. 601. AUTHORIZED SERVICE AREA.**

3           (a) IN GENERAL.—The authorized service area of the  
4 Central Valley Project authorized under the Central Valley  
5 Project Improvement Act (Public Law 102–575; 106 Stat.  
6 4706) shall include the area within the boundaries of the  
7 Kettleman City Community Services District, California,  
8 as in existence on the date of enactment of this Act.

9           (b) LONG-TERM CONTRACT.—

10           (1) IN GENERAL.—Notwithstanding the Central  
11 Valley Project Improvement Act (Public Law 102–  
12 575; 106 Stat. 4706) and subject to paragraph (2),  
13 the Secretary of the Interior, in accordance with the  
14 reclamation laws, shall enter into a long-term con-  
15 tract with the Kettleman City Community Services  
16 District, California, under terms and conditions mu-  
17 tually agreeable to the parties, for the delivery of up  
18 to 900 acre-feet of Central Valley Project water for  
19 municipal and industrial use.

20           (2) LIMITATION.—Central Valley Project water  
21 deliveries authorized under the contract entered into  
22 under paragraph (1) shall be limited to the minimal  
23 quantity necessary to meet the immediate needs of  
24 the Kettleman City Community Services District,  
25 California, in the event that local supplies or State

1 Water Project allocations are insufficient to meet  
2 those needs.

3 (c) PERMIT.—The Secretary shall apply for a permit  
4 with the State for a joint place of use for water deliveries  
5 authorized under the contract entered into under sub-  
6 section (b) with respect to the expanded service area under  
7 subsection (a), consistent with State law.

8 (d) ADDITIONAL COSTS.—If any additional infra-  
9 structure, water treatment, or related costs are needed to  
10 implement this section, those costs shall be the responsi-  
11 bility of the non-Federal entity.

12 **SEC. 602. RESCHEDULED WATER.**

13 (a) IN GENERAL.—In connection with operations of  
14 the Central Valley Project, California, if the San Luis Res-  
15 ervoir does not fill by the last day of February of any year,  
16 the Secretary of the Interior shall permit any entity with  
17 an agricultural water service or repayment contract for the  
18 delivery of water from the Delta Division or the San Luis  
19 Unit to reschedule into the immediately following contract  
20 year (March 1 through the last day of February) any un-  
21 used Central Valley Project water previously allocated for  
22 irrigation purposes.

23 (b) APPORTIONMENT.—If water remaining in Fed-  
24 eral storage in San Luis Reservoir on the last day of Feb-  
25 ruary of any year is insufficient to meet all rescheduling

1 requests under subsection (a), the Secretary of the Inte-  
2 rior shall, based on contract quantity, apportion among  
3 all contractors that request to reschedule water all water  
4 remaining in San Luis Reservoir on the last day of Feb-  
5 ruary of the applicable year.

6 (c) AVAILABILITY OF ADDITIONAL WATER.—The  
7 Secretary shall make all reasonable efforts to make avail-  
8 able additional rescheduled water, if the efforts do not  
9 interfere with the Central Valley Project operations in the  
10 contract year for which Central Valley Project water has  
11 been rescheduled.

12 **SEC. 603. FISHERIES DISASTER DECLARATION.**

13 ***【TO BE SUPPLIED.】***

14 **SEC. 604. RESTORATION FUND ADVISORY BOARD.**

15 Section 3407 of the Central Valley Project Improve-  
16 ment Act (Public Law 102–575; 106 Stat. 4726) is  
17 amended by adding at the end the following:

18 “(g) REPORT ON EXPENDITURE OF FUNDS.—

19 “(1) IN GENERAL.—For each fiscal year, the  
20 Secretary, in consultation with the Advisory Board,  
21 shall submit to Congress a plan for the expenditure  
22 of all of the funds deposited into the Restoration  
23 Fund during the preceding fiscal year.

24 “(2) CONTENTS.—The plan shall include an  
25 analysis of the cost-effectiveness of each expenditure.

1 “(h) ADVISORY BOARD.—

2 “(1) ESTABLISHMENT.—There is established  
3 the Restoration Fund Advisory Board (referred to in  
4 this subsection as the ‘Advisory Board’), which shall  
5 be composed of 14 members appointed by the Sec-  
6 retary.

7 “(2) MEMBERSHIP.—

8 “(A) IN GENERAL.—The Secretary shall  
9 appoint to the Advisory Board members who  
10 represent the various Central Valley Project  
11 stakeholders, of whom—

12 “(i) 3 members shall be agricultural  
13 users of the Central Valley Project;

14 “(ii) 2 members shall be municipal  
15 and industrial users of the Central Valley  
16 Project;

17 “(iii) 3 members shall be power con-  
18 tractors of the Central Valley Project;

19 “(iv) 1 member shall be a representa-  
20 tive of a Federal wildlife refuge that has  
21 entered into a contract with the Bureau of  
22 Reclamation for Central Valley Project  
23 water supplies;

24 “(v) 1 member shall represent a non-  
25 governmental organization involved in the

1 protection and restoration of California  
2 fisheries;

3 “(vi) 1 member shall represent the  
4 commercial fishing industry;

5 “(vii) 1 member shall represent the  
6 recreational fishing industry; and

7 “(viii) 2 members shall be appointed  
8 at the discretion of the Secretary.

9 “(B) OBSERVER.—The Secretary and the  
10 Secretary of Commerce may each designate a  
11 representative to act as an observer of the Advi-  
12 sory Board.

13 “(C) CHAIRPERSON.—The Secretary shall  
14 appoint 1 of the members described in subpara-  
15 graph (A) to serve as chairperson of the Advi-  
16 sory Board.

17 “(3) TERMS.—The term of each member of the  
18 Advisory Board shall be 4 years.

19 “(4) DATE OF APPOINTMENTS.—The appoint-  
20 ment of a member of the Advisory Board shall be  
21 made not later than—

22 “(A) the date that is 120 days after the  
23 date of enactment of this subsection; or

24 “(B) in the case of a vacancy on the Advi-  
25 sory Board described in paragraph (5), the date

1           that is 120 days after the date on which the va-  
2           cancy occurs.

3           “(5) VACANCIES.—

4                 “(A) IN GENERAL.—A vacancy on the Ad-  
5           visory Board shall be—

6                 “(i) filled in the manner in which the  
7           original appointment was made; and

8                 “(ii) subject to any conditions that  
9           applied with respect to the original ap-  
10          pointment.

11                “(B) FILLING UNEXPIRED TERM.—An in-  
12          dividual selected to fill a vacancy on the Advi-  
13          sory Board shall be appointed for the unexpired  
14          term of the member replaced.

15                “(C) EXPIRATION OF TERMS.—The term  
16          of a member shall not expire before the date on  
17          which the successor of the member takes office.

18                “(6) REMOVAL.—A member of the Advisory  
19          Board may be removed from office by the Secretary.

20                “(7) NONAPPLICABILITY OF FACA.—The Advi-  
21          sory Board shall not be subject to the requirements  
22          of the Federal Advisory Committee Act (5 U.S.C.  
23          App.).

24                “(8) DUTIES.—The Advisory Board shall—

1           “(A) meet not less frequently than semi-  
2           annually to develop and provide to the Sec-  
3           retary recommendations regarding priorities  
4           and spending levels on projects and programs  
5           carried out under this title;

6           “(B) ensure that any advice or rec-  
7           ommendations provided by the Advisory Board  
8           reflect the independent judgment of the Advi-  
9           sory Board;

10           “(C) not later than December 31, 2015,  
11           and annually thereafter, submit to the Sec-  
12           retary and Congress the recommendations  
13           under subparagraph (A); and

14           “(D) not later than December 31, 2015,  
15           and biennially thereafter, submit to Congress a  
16           report that describes the progress made in  
17           achieving the actions described in section 3406.

18           “(9) ADMINISTRATION.—With the consent of  
19           the appropriate department or agency head, the Ad-  
20           visory Board may use the facilities and services of  
21           any Federal department or agency.

22           “(10) COOPERATION AND ASSISTANCE.—

23           “(A) IN GENERAL.—On receipt of a re-  
24           quest from the chairperson of the Advisory  
25           Board for information or assistance to facilitate



1 carrying out this section, the Secretary shall  
2 promptly provide such information or assist-  
3 ance, unless otherwise prohibited by law.

4 “(B) OFFICE SPACE AND ASSISTANCE.—  
5 The Secretary shall provide to the Advisory  
6 Board—

7 “(i) appropriate and adequate office  
8 space, together with such equipment, office  
9 supplies, and communications facilities and  
10 services as may be necessary for the oper-  
11 ation of the Advisory Board; and

12 “(ii) necessary maintenance services  
13 for such offices, equipment, and facili-  
14 ties.”.

15 **SEC. 605. WATER OPERATIONS REVIEW PANEL.**

16 (a) ESTABLISHMENT.—There is established a panel,  
17 to be known as the “Water Operations Review Panel” (re-  
18 ferred to in this section as the “Panel”).

19 (b) MEMBERSHIP.—

20 (1) COMPOSITION.—The Panel shall be com-  
21 posed of 5 members, to be appointed by the Sec-  
22 retary of the Interior, in consultation with the Sec-  
23 retary of Commerce, of whom—

24 (A) 1 member shall be a former State-  
25 elected official, who shall be the Chairperson of

1 the Panel (referred to in this section as the  
2 “Chairperson”);

3 (B) 2 members shall be fisheries biologists,  
4 of whom—

5 (i) 1 shall have expertise in Delta  
6 smelt; and

7 (ii) 1 shall have expertise in  
8 salmonids; and

9 (C) 2 members shall be engineers with sub-  
10 stantial expertise in water operations.

11 (2) RECOMMENDATIONS.—The Secretary of the  
12 Interior shall take into consideration the rec-  
13 ommendations—

14 (A) of the Governor of the State, for pur-  
15 poses of appointing a member under paragraph  
16 (1)(A); and

17 (B) of the Director of the California De-  
18 partment of Water Resources, for purposes of  
19 appointing members under paragraph (1)(C).

20 (3) PROHIBITION ON FEDERAL GOVERNMENT  
21 EMPLOYMENT.—For a period of at least 3 years  
22 prior to appointment to the Panel, a member ap-  
23 pointed to the Panel under paragraph (1) shall not  
24 have been an employee of the Federal Government.

1           (4) DATE OF APPOINTMENTS.—The appoint-  
2           ment of a member of the Panel shall be made not  
3           later than—

4                   (A) the date that is 120 days after the  
5           date of enactment of this Act; or

6                   (B) in the case of a vacancy on the Panel  
7           described in subsection (c)(2), the date that is  
8           120 days after the date on which the vacancy  
9           occurs.

10       (c) TERM; VACANCIES.—

11           (1) TERMS.—A member of the Panel shall be  
12           appointed for a term of 3 years, except that, with  
13           respect to the members initially appointed to the  
14           Panel under this section—

15                   (A) the Chairperson shall be appointed for  
16           a term of 3 years;

17                   (B) of the members appointed under sub-  
18           section (b)(1)(B)—

19                           (i) 1 member shall be appointed for a  
20           term of 1 year; and

21                           (ii) 1 member shall be appointed for a  
22           term of 2 years; and

23                   (C) of the members appointed under sub-  
24           section (b)(1)(C)—

1 (i) 1 member shall be appointed for a  
2 term of 1 year; and

3 (ii) 1 member shall be appointed for a  
4 term of 2 years.

5 (2) VACANCIES.—

6 (A) IN GENERAL.—A vacancy on the Panel  
7 shall be—

8 (i) filled in the manner in which the  
9 original appointment was made; and

10 (ii) subject to any conditions that ap-  
11 plied with respect to the original appoint-  
12 ment.

13 (B) TERM.—An individual appointed to fill  
14 a vacancy on the Panel shall be appointed for  
15 the unexpired term of the member being re-  
16 placed.

17 (3) EXPIRATION OF TERMS.—The term of any  
18 member shall not expire before the date on which  
19 the successor of the member takes office.

20 (d) REMOVAL.—A member of the Panel may be re-  
21 moved from office by the Secretary of the Interior.

22 (e) NONAPPLICABILITY OF FACA.—The Panel shall  
23 not be subject to the requirements of the Federal Advisory  
24 Committee Act (5 U.S.C. App.).

25 (f) DUTIES.—

1           (1) ASSESSMENT AND REPORT ON OPER-  
2           ATIONAL DECISIONS.—

3           (A) IN GENERAL.—Not later than Novem-  
4           ber 30, 2015, and not later than November 30  
5           of each year thereafter, the Panel shall submit  
6           to the Committees and Subcommittees de-  
7           scribed in subparagraph (B) a report that in-  
8           cludes—

9                   (i) an assessment of the operational  
10                  decisions under this Act; and

11                   (ii) recommendations for the prospec-  
12                  tive implementation of this Act.

13           (B) COMMITTEES AND SUBCOMMITTEES.—  
14           The Committees and Subcommittees referred to  
15           in subparagraph (A) are—

16                   (i) the Committee on Environment  
17                  and Public Works of the Senate;

18                   (ii) the Subcommittee on Energy and  
19                  Water Development of the Committee on  
20                  Appropriations of the Senate;

21                   (iii) the Committee on Natural Re-  
22                  sources of the House of Representatives;  
23                  and

24                   (iv) the Subcommittee on Energy and  
25                  Water Development of the Committee on

1 Appropriations of the House of Represent-  
2 atives.

3 (C) REQUIREMENTS FOR ASSESSMENT.—

4 In making the assessment under subparagraph  
5 (A)(i), the Panel shall review and evaluate—

6 (i) the decisions of the Director, the  
7 Assistant Administrator, and the Commis-  
8 sioner in implementing this Act and other  
9 Federal laws applicable to the operations  
10 of the Central Valley Project and the State  
11 Water Project;

12 (ii) the compliance of the Director ,  
13 the Assistant Administrator, and the Com-  
14 missioner with the Endangered Species Act  
15 of 1973 (16 U.S.C. 1531 et seq.) with re-  
16 spect to operations of the Central Valley  
17 Project and the State Water Project; and

18 (iii) the efforts of the Director, the  
19 Assistant Administrator, and the Commis-  
20 sioner to minimize water supply disrup-  
21 tions while complying with the Endangered  
22 Species Act of 1973 (16 U.S.C. 1531 et  
23 seq.) and this Act.

24 (D) REQUIREMENTS FOR RECOMMENDA-  
25 TIONS.—The Panel shall make recommenda-

tions under subparagraph (A)(ii) for prospective actions and potential actions for further study to better achieve the purposes of this Act or the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) as applied to the operations of the Central Valley Project and the State Water Project, including proposals—

(i) that in combination, increase—

(I) the survival of listed species;

and

(II) water supplies for the Central Valley Project and the State Water Project;

(ii) to increase the survival of listed fish species with the minimum practicable adverse effects on water supplies for the Central Valley Project and the State Water Project that would result from taking the specific proposed action recommended;

(iii) to increase the water supplies described in clause (ii) with the minimum practicable adverse effects on the survival of listed fish species; and

(iv) that respond to the annual reports of the Delta Science Program Inde-

1                   pendent Review Panel regarding long-term  
2                   operations opinions.

3                   (2) 5-YEAR ASSESSMENT.—

4                   (A) IN GENERAL.—Not later than 5 years  
5                   after the date of enactment of this Act, and  
6                   every 5 years thereafter, the Panel shall publish  
7                   a report that—

8                   (i) evaluates the effectiveness of this  
9                   Act; and

10                  (ii) makes legislative recommendations  
11                  regarding—

12                  (I) any provision of this Act that  
13                  should be amended or repealed due to  
14                  ineffectiveness or any other reason;  
15                  and

16                  (II) alternative legislation or  
17                  modifications to this Act that could  
18                  provide additional water supplies for  
19                  the Central Valley Project and the  
20                  State Water Project without reducing  
21                  the survival of listed fish species.

22                  (B) GOAL.—To the maximum extent prac-  
23                  ticable, the Panel shall submit legislative rec-  
24                  ommendations that, in the aggregate, would—



1 (i) improve water supplies for the  
2 Central Valley Project and the State Water  
3 Project; and

4 (ii) increase the survival of listed fish  
5 species.

6 (C) SUBMISSION TO CONGRESS.—The  
7 Panel shall submit to the Committees and Sub-  
8 committees of Congress described in paragraph  
9 (1)(B) the legislative recommendations of the  
10 Panel.

11 (3) SUBMISSION OF COMMENTS AND PRO-  
12 POSALS TO PANEL.—

13 (A) IN GENERAL.—In preparing the re-  
14 ports under paragraphs (1) and (2), the Panel  
15 shall solicit comments and proposals from any  
16 interested individuals and entities, in accord-  
17 ance with subparagraph (B).

18 (B) SCHEDULE.—The Panel shall pub-  
19 lish—

20 (i) a schedule for the receipt of com-  
21 ments and proposals under subparagraph  
22 (A); and

23 (ii) instructions regarding how to sub-  
24 mit to the Panel those comments and pro-  
25 posals.

1 (g) COOPERATION AND ASSISTANCE.—

2 (1) IN GENERAL.—On request of the Chair-  
3 person for information or assistance to facilitate car-  
4 rying out this section, the Secretary of the Interior  
5 and the Secretary of Commerce shall promptly pro-  
6 vide such information or assistance to the Panel, un-  
7 less otherwise prohibited by law.

8 (2) PROVISION OF OFFICE SPACE; EQUIP-  
9 MENT.—The Secretary of the Interior shall provide  
10 to the Panel—

11 (A) appropriate and adequate office space;

12 (B) such equipment, office supplies, and  
13 communications facilities and services as may  
14 be necessary for the operation of the Panel; and

15 (C) any necessary maintenance services for  
16 the offices, equipment, and facilities provided  
17 under subparagraphs (A) and (B).

18 **SEC. 606. CONTINGENCY IN EVENT OF CONTINUING RESO-**  
19 **LUTION FOR FISCAL YEAR 2015.**

20 Any deadline applicable to a Federal department or  
21 agency, as described in sections 103(b), 103(d), 202, 204,  
22 and 205, shall be extended by the number of days that  
23 any resolution providing continuing appropriations for the  
24 United States Fish and Wildlife Service or the National

1 Marine Fisheries Service for fiscal year 2015 is in effect  
2 after January 1, 2015, if—

3 (1) such a continuing resolution is enacted;

4 (2) the continuing resolution does not include  
5 funding for the actions of the applicable department  
6 or agency required by this Act (or an amendment  
7 made by this Act); and

8 (3) a funding shortfall remains for the actions  
9 of the applicable department or agency after con-  
10 sultation by the head of the department or agency  
11 with the California Department of Water Resources,  
12 Central Valley Project and State Water Project con-  
13 tractors, and the Interagency Ecological Program.

Title: To provide drought relief in the State of California, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

## SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the “California Drought Relief Act of 2014”.

(b) Table of Contents.—The table of contents of this Act is as follows:

Sec.1.Short title; table of contents.

Sec.2.Findings.

Sec.3.Definitions.

## TITLE I—ADJUSTING DELTA SMELT MANAGEMENT BASED ON INCREASED REAL-TIME MONITORING AND UPDATED SCIENCE

Sec.101.Definition of Secretary.

Sec.102.Revision of incidental take level calculation for Delta smelt to reflect new science.

Sec.103.Factoring increased real-time monitoring and updated science into Delta smelt management.

## TITLE II—ENSURING SALMONID MANAGEMENT IS RESPONSIVE TO NEW SCIENCE

Sec.201.Definition of Secretary.

Sec.202.Required scientific studies.

Sec.203.Process for ensuring salmonid management is responsive to new science.

Sec.204.Pilot program to protect native anadromous fish in Stanislaus River.

Sec.205.Calfed invasive species pilot projects in the Sacramento-San Joaquin Bay Delta and its tributaries.

Sec.206.Mark fishery and harvest management.

Sec.207.New actions to benefit Central Valley salmonids.

## TITLE III—OPERATIONAL FLEXIBILITY AND DROUGHT RELIEF

Sec.301.Findings.

Sec.302.Definitions.

- 1 Sec.303.Operational flexibility in times of drought.
- 2 Sec.304.Operation of cross-channel gates.
- 3 Sec.305.Flexibility for export/inflow ratio.
- 4 Sec.306.Emergency environmental reviews.
- 5 Sec.307.Prioritizing State revolving funds during droughts.
- 6 Sec.308.Increased flexibility for regular project operations.
- 7 Sec.309.Temporary operational flexibility for first few storms of 2015 water year.
- 8 Sec.310.Expediting water transfers.
- 9 Sec.311.Warren Act contracts.
- 10 Sec.312.Additional Warren Act contracts.

## 11 TITLE IV—INCREASING WATER STORAGE

- 12 Sec.401.Findings.
- 13 Sec.402.Calfed storage feasibility studies.
- 14 Sec.403.Water storage project construction.
- 15 Sec.404.Other storage feasibility studies.
- 16 Sec.405.Dam safety projects with increased storage component.
- 17 Sec.406.Updating water operations manuals for non-Federal projects.
- 18 Sec.407.Central Valley Project.

## 19 TITLE V—WATER RIGHTS PROTECTIONS

- 20 Sec.501.Protections for State Water Project contractors.
- 21 Sec.502.Area of origin protections.
- 22 Sec.503.No redirected adverse impacts.
- 23 Sec.504.Effect on State laws.

## 24 TITLE VI—MISCELLANEOUS

- 25 Sec.601.Authorized service area.
- 26 Sec.602.Rescheduled water.
- 27 Sec.603.Fisheries disaster declaration.
- 28 Sec.604.Restoration Fund Advisory Board.
- 29 Sec.605.Water Operations Review Panel.
- 30 Sec.606.Contingency in event of continuing resolution for fiscal year 2015.

## 31 SEC. 2. FINDINGS.

Congress finds the following:

(1) As established in the Proclamation of a State of Emergency issued by the Governor of the State on January 17, 2014, the State is experiencing record dry conditions.

(2) Extremely dry conditions have persisted in the State since 2012, and the drought conditions are likely to persist into the future.

(3) As of September 2014, the forecast of the National Weather Service does not show a high likelihood of the State experiencing significant precipitation for the remainder of the year.

(4) The water supplies of the State are at record-low levels, as indicated by the fact that all major Central Valley Project reservoir levels were at 20 to 35 percent of capacity as of September 25, 2014.

(5) The lack of precipitation has been a significant contributing factor to the 6,091 fires experienced in the State as of September 15, 2014, and which covered nearly 400,000 acres.

(6)(A) According to a study released by the University of California, Davis in July 2014, the drought has led to—

(i) the fallowing of 428,000 acres of farmland;

(ii) the loss of \$810,000,000 in crop revenue;

(iii) the loss of \$203,000,000 in dairy and other livestock value; and

(iv) the increase of groundwater pumping costs by \$454,000,000.

(B) The statewide economic costs are estimated to be \$2,200,000,000, with over 17,000 seasonal and part-time agricultural jobs lost.

(7) Level II water deliveries under the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706) and amendments made by that Act to refuges have also declined by 25 percent in the north of the Delta region, and by 35 percent in the south of the Delta region.

(8) Only  $\frac{1}{6}$  of the usual acres of rice fields are being flooded, which leads to a significant decline in habitat for migratory birds and an increased risk of disease at the remaining wetland due to overcrowding of the birds.

(9) The drought of 2013 through 2014 constitutes a serious emergency that poses immediate and severe risks to human life and safety and to the environment throughout the State.

(10) The serious emergency described in paragraph (4) requires—

(A) immediate and credible action that respects the complexity of the water system of the State and the importance of the water system to the entire State; and

(B) policies that do not pit stakeholders against one another, which history shows only leads to costly litigation that benefits no one and prevents any real solutions.

(11) Federal law (including regulations) directly authorizes expedited decisionmaking procedures and environmental and public review procedures to enable timely and appropriate implementation of actions to respond to the type and severity of the serious

1 emergency described in paragraph (4).

2 (12) The serious emergency described in paragraph (4) fully satisfies the conditions  
3 necessary for the exercise of emergency decisionmaking, analytical, and public review  
4 requirements under—

5 (A) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

6 (B) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

7 (C) water control management procedures of the Corps of Engineers described in  
8 section 222.5 of title 33, Code of Federal Regulations (including successor  
9 regulations); and

10 (D) the Reclamation States Emergency Drought Relief Act of 1991 (Public Law  
11 102–250; 106 Stat. 53).

12 (13) The smelt biological opinion and salmonid biological opinion contain reasonable  
13 and prudent alternatives to protect listed fish species from being jeopardized by operation of  
14 the Central Valley Project and State Water Project and to prevent adverse modification of  
15 designated critical habitat.

16 (14) The effect of those reasonable and prudent alternatives in the biological opinions  
17 may restrict the quantity of water pumping that can occur to deliver water for agricultural,  
18 municipal, industrial, groundwater, and refuge uses in the State.

19 (15) Data on the difference between water demand and reliable water supplies for various  
20 regions south of the Delta, including the San Joaquin Valley, indicate there is a significant  
21 annual gap between reliable water supplies to meet agricultural, municipal, industrial,  
22 groundwater, and refuge water needs within the South of Delta and Friant Division of the  
23 Central Valley Project and the State Water Project south of the Sacramento-San Joaquin  
24 River Delta and north of the Tehachapi mountain range and the demands of those areas.

25 (16) The gap described in paragraph (15) varies depending on the methodology of the  
26 analysis performed, but can be represented in the following ways:

27 (A) For Central Valley Project South of Delta water service contractors, if it is  
28 assumed that a water supply deficit is the difference between the quantity of water  
29 available for allocation and the maximum contract quantity of water, particularly in  
30 years closer to the date of enactment of this Act, the water supply deficits that have  
31 developed from 1992 to 2014 as a result of changes aside from natural variations in  
32 hydrology during this timeframe range between 720,000 and 1,100,000 acre-feet.

33 (B) For Central Valley Project and State Water Project water service contractors  
34 south of the Delta and north of the Tehachapi mountain range, if it is assumed that a  
35 water supply deficit is the difference between reliable water supplies, including  
36 maximum water contract deliveries, safe yield of groundwater, safe yield of local and  
37 surface supplies and long-term contracted water transfers, and water demands,  
38 including water demands from agriculture, municipal and industrial uses, and refuge  
39 contractors, the water supply deficit ranges between approximately 2,500,000 to  
40 2,700,000 acre-feet.

41 (C)(i) The California Water Plan evaluated outcomes under current conditions under

198 combinations of climate and growth scenarios, projecting a range of urban and agricultural reliability into the future.

(ii) Reliability under this subparagraph is defined as the percentage of years in which demand is sufficiently met by supply.

(iii) Reliability across a range of futures within the San Joaquin Valley can be presented as—

(I) for the San Joaquin River Hydrologic Region, as defined in the California Water Plan—

(aa) urban supply reliability ranges between 90 and 100 percent, with a mean reliability across futures in the high 90th percentile; and

(bb) agricultural supply reliability ranges between 70 and 100 percent, with a mean reliability across futures in the mid-90th percentile; and

(II) for the Tulare Lake Hydrologic Region, as defined in the California Water Plan—

(aa) urban supply reliability ranges between 70 and 100 percent, with a mean reliability across futures in the mid-90th percentile; and

(bb) agricultural supply reliability ranges between 20 and 100 percent, with a mean reliability across futures in the low 70th percentile.

(17) Since the issuance of the biological opinions, recent studies have raised questions about the benefits to endangered salmonid populations from water pumping restrictions, including the following:

(A)(i) Expert panel reviews have concluded that instantaneous water velocities in the tidal Delta affect juvenile salmonids, not tidally average flows, as previously assumed.

(ii) Based on instantaneous water velocity modeling, water exports have a much smaller area of effect than was previously believed.

(B) Tagging studies conducted since 1993 (representing more than 28,000,000 fish) demonstrate that the proportion of Sacramento Basin origin Chinook salmon entrained into the pumping facilities (including prescreen losses) are on average less than  $\frac{1}{10}$  1 percent.

(C) Telemetric studies of Sacramento Basin and San Joaquin Basin origin juvenile Chinook salmon have not demonstrated any significant adverse effect from water exports on fish survival.

(18) Data of pumping activities at the Central Valley Project and State Water Project Delta pumps identify that, on average from Water Year 2009 to Water Year 2014, pumping activity takes 893 Delta smelt annually with an authorized take level of 5,003 Delta smelt annually, according to the biological opinion issued December 15, 2008.

(19) It is worth exploring whether there is a way to implement the biological opinions that would preserve the protections afforded endangered fish and simultaneously increase water deliveries to the Central Valley Project and State Water Project without weakening



environmental laws or protections.

(20) In 2014, better information exists than was known in 2008 concerning—

(A) conditions and operations that may or may not lead to high salvage events that jeopardize the fish populations; and

(B) what alternative management actions can be taken to avoid jeopardy.

(21) Alternative management strategies, such as trapping and barging juvenile salmon through the Delta, removing nonnative species, enhancing habitat, and monitoring fish movement and location in real-time, can contribute significantly to protecting and recovering these endangered fish species, and at potentially lower costs to water supplies.

(22) Resolution of fundamental policy questions concerning the extent to which application of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) affects the operation of the Central Valley Project and State Water Project is the responsibility of Congress.

### SEC. 3. DEFINITIONS.

In this Act:

(1) ASSISTANT ADMINISTRATOR.—The term “Assistant Administrator” means the Assistant Administrator for the National Marine Fisheries Service.

(2) COMMISSIONER.—The term “Commissioner” means the Commissioner of the Bureau of Reclamation.

(3) DELTA.—The term “Delta” means the Sacramento-San Joaquin Delta and the Suisun Marsh, as defined in sections 12220 and 29101 of the California Public Resources Code.

(4) DELTA SMELT.—The term “Delta smelt” means the fish species with the scientific name *Hypomesus transpacificus*.

(5) DIRECTOR.—The term “Director” means the Director of the United States Fish and Wildlife Service.

(6) EXPORT PUMPING RATES.—The term “export pumping rates” means the rates of pumping at the W.C. “Bill” Jones Pumping Plant and the Harvey O. Banks Pumping Plant, in the southern Delta.

(7) JEOPARDY.—The term “jeopardy” means to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.

(8) LISTED FISH SPECIES.—The term “listed fish species” means—

(A) listed salmonid species; and

(B) the Delta smelt.

(9) LISTED SALMONID SPECIES.—The term “listed salmonid species” means—

(A) natural origin steelhead;

(B) natural origin genetic spring run Chinook; and

(C) genetic winter run Chinook salmon.

(10) OMR.—The term “OMR” means the Old and Middle River in the Delta.

(11) OMR FLOW OF ^5000 CFS.—The term “OMR flow of ^5000 cfs” means Old and Middle River flow of negative 5,000 cubic feet per second as measured by—

(A) the smelt biological opinion; and

(B) the salmonid biological opinion.

(12) SALMONID BIOLOGICAL OPINION.—The term “salmonid biological opinion” means the biological opinion issued by the National Marine Fisheries Service on June 4, 2009, as amended, and any successor biological opinion.

(13) SMELT BIOLOGICAL OPINION.—The term “smelt biological opinion” means the biological opinion on the Long-Term Operational Criteria and Plan for coordination of the Central Valley Project and State Water Project issued by the United States Fish and Wildlife Service on December 15, 2008, as amended, and any successor biological opinion.

(14) STATE.—The term “State” means the State of California.

(15) STATE WATER PROJECT.—The term “State Water Project” means the water project described by California Water Code section 11550 et seq., and operated by the California Department of Water Resources.

## TITLE I—ADJUSTING DELTA SMELT MANAGEMENT BASED ON INCREASED REAL-TIME MONITORING AND UPDATED SCIENCE

### SEC. 101. DEFINITION OF SECRETARY.

In this title, the term “Secretary” means the Secretary of the Interior.

### SEC. 102. REVISION OF INCIDENTAL TAKE LEVEL CALCULATION FOR DELTA SMELT TO REFLECT NEW SCIENCE.

Not later than October 1, 2015, the Director, in cooperation with other Federal, State, and local agencies, shall use the best scientific and commercial data available to complete a review and, if warranted, a modification of the incidental take level in the smelt biological opinion that takes into account, among other considerations—

(1) salvage information available over at least the 18-year period ending on the date of enactment of this Act;

(2) updated or more recently developed statistical models;

(3) updated scientific and commercial data; and

(4) the most recent information regarding the environmental factors driving Delta smelt salvage.

## SEC. 103. FACTORING INCREASED REAL-TIME MONITORING AND UPDATED SCIENCE INTO DELTA SMELT MANAGEMENT.

### (a) Implementation of Alternatives.—

(1) IN GENERAL.—The reasonable and prudent alternatives described in the smelt biological opinion shall be implemented consistent with current best scientific and commercial data available.

(2) ADJUSTMENTS.—Implementation shall be adjusted accordingly as new scientific and commercial data is developed.

### (b) Increased Monitoring to Inform Real-time Operations.—

(1) IN GENERAL.—Subject to the availability of funding, the Secretary, in consultation with Delta science partners, shall conduct additional surveys to carry out this section on an annual basis at the appropriate time of the year based on environmental conditions.

(2) ADMINISTRATION.—In carrying out this section, after seeking public input, the Secretary shall —

(A) use the most appropriate survey methods for the detection of Delta smelt to determine the extent that adult Delta smelt are distributed in relation to certain levels of turbidity, or other environmental factors that may influence salvage rate; and

(B) use results from appropriate survey methods for the detection of Delta smelt to determine how the Central Valley Project and State Water Project may be operated more efficiently to minimize salvage while maximizing rates of water export.

(3) ADDITIONAL MONITORING.—Effective during the period beginning on December 1, 2014, and ending March 31, 2015, and in each successive December through March period, if suspended sediment loads enter the Delta from the Sacramento River and the suspended sediment loads appear likely to raise turbidity levels in Old River north of the export pumps from values below 12 Nephelometric Turbidity Units to values above 12 Nephelometric Turbidity Units, the Secretary shall—

(A) conduct daily monitoring using appropriate survey methods at locations, including the vicinity of Station 902, to determine the extent that adult Delta smelt are moving with turbidity toward the export pumps; and

(B) use results from the monitoring surveys at locations, including the vicinity of Station 902, to determine how increased trawling can inform daily real-time Central Valley Project and State Water Project operations to minimize salvage while maximizing rates of water export.

### (c) Periodic Review of Monitoring.—At least once every 5 years or earlier if the Secretary determines appropriate, the Secretary shall—

(1) evaluate whether the monitoring program under subsection (b), combined with other monitoring programs for the Delta, is providing sufficient data to inform Central Valley Project and State Water Project operations to minimize salvage while maximizing rates of

1 water export; and

2 (2) determine whether the monitoring efforts should be changed in the short- or long-term  
3 to provide more useful data.

4 (d) Delta Smelt Distribution Study.—

5 (1) IN GENERAL.—Not later than January 1, 2016, subject to the availability of funding,  
6 the Secretary, in consultation with Delta science partners, shall implement new targeted  
7 sampling and monitoring specifically designed to understand Delta smelt abundance,  
8 distribution, and the types of habitat occupied by Delta smelt during all life stages.

9 (2) SAMPLING.—The Delta smelt distribution study required under paragraph (1) shall, at  
10 a minimum—

11 (A) include recording water quality and tidal data;

12 (B) be designed to understand Delta smelt abundance, distribution, habitat use, and  
13 movements throughout the Delta during all seasons;

14 (C) consider areas not routinely sampled by existing monitoring programs, including  
15 wetland channels, near-shore water, depths below 35 feet, and shallow-water; and

16 (D) use the most biologically appropriate survey methods, including sampling gear  
17 suited to the type of sampling or monitoring.

18 (e) Scientifically Supported Implementation of Old and Middle River Flow Requirements.—In  
19 implementing the provisions of the smelt biological opinion on reverse flow in the Old and  
20 Middle Rivers, the Secretary shall—

21 (1) consider the relevant provisions of the smelt biological opinion;

22 (2) manage reverse flow in Old and Middle Rivers, as prescribed by the smelt biological  
23 opinion, to minimize water supply reductions for the Central Valley Project and the State  
24 Water Project;

25 (3) document in writing any significant facts about real-time conditions relevant to the  
26 determinations of reverse OMR flow rates, including—

27 (A) whether targeted real-time fish monitoring in Old River pursuant to this section,  
28 including monitoring in the vicinity of Station 902, indicates that a significant increase  
29 in the salvage of Delta smelt is imminent; and

30 (B) whether near-term forecasts with available salvage models show under  
31 prevailing conditions that OMR flow of ^5000 cubic feet per second will cause  
32 significantly increased take of Delta smelt;

33 (4) show in writing that any determination to manage OMR reverse flow at rates less  
34 negative than ^5000 cubic feet per second is necessary to avoid a negative impact on the  
35 long-term survival of the Delta smelt, including an explanation of the data examined and the  
36 connection between the data and the choice made, after considering—

37 (A) the findings under paragraph (3);

38 (B) whether continued project operations over the remainder of the water year would  
39 exceed the incidental take level;

(C) the potential effects of entrainment on subsequent smelt abundance, including consideration of the distribution of the population throughout the Delta;

(D) the water temperature;

(E) other factors relevant to the determination; and

(F) whether any alternative measures could have a lesser water supply impact; and

(5) for any subsequent biological opinion, make the showing required under paragraph (4) for any determination to manage OMR reverse flow at rates less negative than the upper limit in the smelt biological opinion.

(f) Memorandum of Understanding.—

(1) IN GENERAL.—Not later than December 1, 2014, the Commissioner and the Director shall enter into a memorandum of understanding to ensure that the smelt biological opinion is implemented in a manner that minimizes water supply losses while complying with applicable laws (including regulations).

(2) CHANGES TO SMELT BIOLOGICAL OPINION.—

(A) IN GENERAL.—If the memorandum of understanding changes any procedures established under the smelt biological opinion, additional consultation shall not be required if—

(i) the changes do not have an adverse effect on listed species; and

(ii) the implementation of the memorandum of understanding would not be a major change to implementation of the smelt biological opinion.

(B) TAKE EXEMPTION.—Any change to the procedures that does not create a new adverse effect to a listed species shall not alter application of the take exemption in the incidental take statement in the biological opinion under section 7(o)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1536(o)(2)).

## TITLE II—ENSURING SALMONID MANAGEMENT IS RESPONSIVE TO NEW SCIENCE

### SEC. 201. DEFINITION OF SECRETARY.

In this title, the term “Secretary” means the Secretary of Commerce.

### SEC. 202. REQUIRED SCIENTIFIC STUDIES.

(a) Trap and Barge Pilot Project to Increase Survival Through the Delta.—

(1) IN GENERAL.—The Assistant Administrator and the Commissioner, in collaboration with the United States Fish and Wildlife Service, the California Department of Fish and Wildlife, and other interested parties, shall design, permit, implement, and evaluate a pilot program to test the efficacy of an experimental trap and barge program to improve survivals of juvenile salmonids emigrating from the San Joaquin watershed through the Delta.

(2) PLAN.—

1 (A) IN GENERAL.—Not later than 30 days after the date of enactment of this Act, the  
2 Assistant Administrator shall convene a working group of the relevant agencies and  
3 other interested parties to develop and execute a plan for the design, budgeting,  
4 implementation, and evaluation of the pilot program described in paragraph (1), using  
5 existing expertise on trap and barge programs as may be available.

6 (B) CONTENTS.—The plan shall describe—

7 (i) a schedule and budget for the program; and

8 (ii) the responsible parties for each element of the program.

9 (3) REVIEW.—The Assistant Administrator shall simultaneously—

10 (A) provide an opportunity for public review and comment on the pilot program;  
11 and

12 (B) ensure an expeditious independent peer review of the program to improve the  
13 rigor and likelihood of success of the program.

14 (4) PILOT PROGRAM.—After carrying out paragraph (2), the Assistant Administrator  
15 shall—

16 (A) complete the necessary design and evaluations of the pilot program; and

17 (B) seek such authorizations and permits as may be required for the prompt  
18 implementation and evaluation of the pilot program by the Assistant Administrator, the  
19 Commissioner, or such other parties as the Assistant Administrator and Commissioner  
20 determine appropriate.

21 (5) DURATION.—Subject to the availability of funding, the Assistant Administrator and  
22 the Commissioner shall—

23 (A) to the maximum extent practicable, commence implementation of the pilot  
24 program during calendar year 2015 or as soon thereafter as practicable; and

25 (B) conduct the pilot program for such period of time as is necessary to evaluate the  
26 efficacy of the program to improve survivals across a range of environmental  
27 conditions.

28 (6) ANNUAL REPORTS.—The Assistant Administrator and the Commissioner shall jointly  
29 report annually to the Committee on Environment and Public Works of the Senate and the  
30 Committee on Natural Resources of the House of Representatives on progress made in  
31 carrying out this subsection, including—

32 (A) estimated survival rates through the Delta for both juvenile salmonids that were  
33 barged through the Delta and juvenile salmonids that were not barged; and

34 (B) if survival rates are significantly higher for barged fish as compared to other  
35 outmigrating smolts, recommendations regarding broadening the pilot program and  
36 adjusting any relevant recommendations under section 203.

37 (b) Tagging Studies.—

38 (1) IN GENERAL.—The Assistant Administrator, in consultation with Delta science  
39 partners—



(A) shall carry out tagging studies, including acoustic telemetry and Passive Integrated Transponder (PIT) tagging studies as appropriate, under which habitat, predators, flow conditions, or other factors are experimentally altered and the behavior and survival of tagged juvenile salmonids are observed; and

(B) may carry out additional studies may to aid in the understanding of Chinook salmon and steelhead abundance, distribution, and survival.

(2) SAMPLING.—Sampling under paragraph (1)(A) shall—

(A) include recording water quality and tidal data;

(B) be designed to aid in the understanding of salmonid abundance, distribution, and movements throughout the Bay Delta, including estimates of Delta survival from Knights Landing or from Mossdale to Chipps Island; and

(C) supplement, not supplant, ongoing acoustic tag and coded wire survival studies in the San Joaquin and Sacramento Rivers that the Assistant Administrator determines are crucial for trend monitoring.

## SEC. 203. PROCESS FOR ENSURING SALMONID MANAGEMENT IS RESPONSIVE TO NEW SCIENCE.

(a) In General.—The Commissioner and the Assistant Administrator shall implement, in accordance with this section, the reasonable and prudent alternative described in the salmonid biological opinion—

(1) to allow for and anticipate adjustments in operating criteria to reflect the best scientific and commercial data currently available; and

(2) to test and evaluate improvements in operations that will meet applicable regulatory requirements and enable improvements in water supply reliability.

(b) Annual Reviews of Certain Operating Criteria.—

(1) IN GENERAL.—Not later than December 31, 2015, and at least annually thereafter, subject to paragraph (4), the Commissioner, in consultation with and with the assistance of the Assistant Administrator, shall examine and identify—

(A) adjustments to the initiation of Action IV.2.3 of the salmonid biological opinion relating to negative OMR flows; and

(B) adjustments in the timing, triggers, or other operational details relating to the implementation of pumping restrictions under Action IV.2.1 of the salmonid biological opinion relating to the inflow to export requirements

(2) RECOMMENDATIONS.—Pursuant to the consultation and assessments carried out under paragraph (1), the Commissioner shall make recommendations to the Assistant Administrator on adjustments that, in the exercise of the adaptive management provisions of the salmonid biological opinion, can improve water supplies and are consistent with subsection (a) and other requirements of applicable law.

(3) IMPLEMENTATION.—The Commissioner shall implement adjustments described in paragraph (2) for which the conditions of subsection (c) are met.

(4) SUCCESSOR BIOLOGICAL OPINION.—The Assistant Administrator and the Commissioner shall review and identify adjustments to water supply restrictions in any successor biological opinion to the salmon biological opinion to apply the requirements of this section to those water supply restrictions in cases in which there are references to Actions IV.2.1 and IV.2.3 of the salmonid biological opinion.

(c) Adjustments.—On receiving the recommendations under subsection (b), the Assistant Administrator shall—

(1) evaluate the effects of the recommended adjustments on listed species; and

(2) recommend to the Commissioner adjustments for which—

(A) the net effect on listed species is equivalent to the net effect using the underlying criteria, taking into account whatever actions or measures may be implemented in conjunction with the adjustments to mitigate the effects of the adjustments; and

(B) the effects of the adjustments fall within the incidental take authorizations.

(d) Offsetting Species Survival Benefits From Other Measures.—

(1) IN GENERAL.—When examining opportunities to offset the potential adverse effect of adjustments under subsection (b) to operating criteria under this section, the Commissioner and the Assistant Administrator shall take into account the potential salmonid survival improvements that are likely to result from other measures that, if implemented in conjunction with the adjustments, would offset the adverse effects of the adjustments.

(2) ADMINISTRATION.—When considering offsetting measures, the Commissioner and the Assistant Administrator shall—

(A) consider the type, timing and nature of the adverse effects to specific species; and

(B) ensure that the measures provide equivalent overall benefits to the listed species in the aggregate, as long as the change in survival rates for each species remains consistent with the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) (including regulations).

(3) WATER DISTRICTS.—The offsetting measures may include actions implemented with the support of a substantial contribution from water districts that would benefit from the adjustments.

(e) Framework for Examining Opportunities to Minimize or Offset the Potential Adverse Effect of Adjustments to Operating Criteria.—Not later than December 31, 2015, and every 5 years thereafter, the Assistant Administrator, in consultation with the Director of the California Department of Fish and Wildlife, based on the best scientific and commercial data available and for each listed salmonid species, issue estimates of the increase in through-Delta survival the Secretary expects to be achieved—

(1) with export restrictions as specified by Reasonable and Prudent Action IV.2.3 of the salmonid biological opinion as compared to limiting OMR flow to a fixed rate of ^5000 cubic feet per second within the time period Action IV.2.3 of the salmonid biological opinion is applicable, based on a given rate of San Joaquin River inflow to the Delta and holding other relevant factors constant;



(2) with San Joaquin River inflow to export restrictions specified within Reasonable and Prudent Action IV.2.1 of the salmonid biological opinion as compared to in the export restrictions in the April and May period imposed by the State Water Resources Control Board decision D-1641, based on a given rate of San Joaquin River inflow to the Delta and holding other relevant factors constant;

(3) by a trap-and-barge program based on the experience of other systems to the extent the systems are comparable, and the study described in section 202, as that information becomes available;

(4) through physical habitat restoration improvements;

(5) through predation control programs;

(6) through temporary barriers, the Cross Channel Gates, and other projects affecting flow in the Delta;

(7) by salvaging fish that may be entrained near the entrance to Clifton Court Forebay; and

(8) by any other management measures that may provide equivalent or better benefits for listed species with improvements to water supplies.

(f) Survival Estimates to Be Quantitative to the Maximum Extent Feasible.—

(1) IN GENERAL.—To the maximum extent feasible, the Assistant Administrator shall make the estimates and determinations described in subsection (e) quantitatively, such as a range of percentage increases in through-Delta survival that could result from the management measures.

(2) QUALITATIVE ESTIMATES.—If the Assistant Administrator cannot provide a quantitative estimate of the benefits to the species from a particular management measure, the Assistant Administrator shall provide qualitative estimates of the benefits that are based on the best available science.

(3) RANKING.—If the Assistant Administrator provides qualitative estimates of the benefits to the species from 1 or more management measures, the Secretary shall, to the maximum extent feasible, rank the management measures described in subsection (e) in terms of the most likely expected contribution to increased through-Delta survival relative to the other measures.

(4) COMPARISON OF BENEFITS.—If at the time the Assistant Administrator conducts the analysis under subsection (b), the Secretary has not issued the estimates of increased through-Delta survival benefits from different management measures pursuant to subsection (e), the Secretary shall compare the benefits to the species from different management measures based on the best scientific and commercial data available at the time.

(g) Comparison of Adverse Consequences for Alternative Management Measures of Equal Benefit to the Salmon.—

(1) DEFINITIONS.—In this subsection:

(A) EQUIVALENT ALTERNATIVE MEASURE.—The term “equivalent alternative measure” means an alternative management measure or combination of alternative

management measures described in paragraph (2).

(B) EQUIVALENT EXISTING MEASURE.—The term “equivalent existing measure” means 1 or more existing measures described in subparagraph (A), (B), (C), or (D) of paragraph (2).

(C) EQUIVALENT INCREASE IN THROUGH-DELTA SURVIVAL RATES FOR LISTED SALMONID SPECIES.—The term “equivalent increase in through-Delta survival rates for listed salmonid species” means an increase in through-Delta survival rates that is equivalent when considering the change in through-Delta survival rates for the listed salmonid species in the aggregate, and not necessarily the same change for each individual species, as long as the change in survival rates for each species remains consistent with the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) (including implementing regulations).

(2) ALTERNATIVE MANAGEMENT MEASURES.—As part of the reviews of operating criteria pursuant to subsection (b), the Assistant Administrator shall determine whether any alternative management measures or combination of alternative management measures described in paragraphs (3) through (8) of subsection (e) would provide an increase in through-Delta survival rates for listed salmonid species that is equivalent to the increase in through-Delta survival rates for listed salmonid species from the following:

(A) With export restrictions as specified by Action IV.2.3 of the salmonid biological opinion, as compared to limiting OMR flow to a fixed rate of ^5000 cubic feet per second within the time period in Action IV.2.3 of the salmonid biological opinion as applicable.

(B) With export restrictions as specified by Action IV.2.3 of the salmonid biological opinion, as compared to a modification of Action IV.2.3 of the salmonid biological opinion that would provide additional water supplies, other than that described in subparagraph (A).

(C) With San Joaquin River inflow to export restrictions specified within Action IV.2.1 of the salmonid biological opinion, as compared to the export restrictions in the April/May period imposed by the State Water Resources Control Board decision D-1641.

(D) With San Joaquin River inflow to export restrictions specified within Action IV.2.1 of the salmonid biological opinion, as compared to a modification of Action IV.2.1 that would provide additional water supplies, other than that described in subparagraph (C).

(3) EQUIVALENT ALTERNATIVE MEASURES.—If the Assistant Administrator identifies an equivalent alternative measure pursuant to paragraph (2), the Assistant Administrator shall determine whether—

(A) it is technically feasible and within Federal jurisdiction to implement the equivalent alternative measure; and

(B) the adverse consequences of doing so are less than the adverse consequences of the equivalent existing measure, including a concise evaluation of the adverse consequences to other affected interests.

(4) OPERATING CRITERIA.—If the Assistant Administrator makes the findings in subparagraphs (A) and (B) of paragraph (3), the Assistant Administrator and the Commissioner shall adjust the operating criteria in the salmonid biological opinion pursuant to this subsection to implement the equivalent alternative measure in place of the equivalent existing measure in order to increase water supplies to the maximum extent practicable while maintaining a net combined effect of equivalent through-Delta survival rates for the listed salmonid species.

(h) Tracking Adverse Effects Beyond the Range of Effects Accounted for in the Salmonid Biological Opinion and Coordinated Operation With Smelt Biological Opinion.—

(1) IN GENERAL.—Among the adjustments to the operational criteria considered through the adaptive management process under this section, the Assistant Administrator and the Commissioner shall—

(A) evaluate the effect on listed salmonid species and water supply of the potential adjustment to operational criteria described in subparagraph (B); and

(B) consider requiring that before all or part of the provisions of Action IV.2.1 or IV.2.3 of the salmonid biological opinion are imposed in any specific instance, the Assistant Administrator show that the implementation of those provisions in that specific instance is necessary to avoid additional adverse effects on listed salmonid species beyond the range of effects analyzed and accounted for in the salmonid biological opinion.

(2) OPERATIONAL CRITERIA.—The Assistant Administrator, the Director, and the Commissioner, in coordination with State officials as appropriate, shall establish operational criteria to coordinate management of OMR flows under the smelt biological opinion and the salmonid biological opinion, to take advantage of opportunities to provide additional water supplies from the coordinated implementation of the smelt biological opinion and the salmonid biological opinion.

(i) Real-time Monitoring and Management.—

(1) IN GENERAL.—The Assistant Administrator and the Commissioner shall, through the adaptive management provisions of the National Marine Fisheries Service of the salmonid biological opinion, analyze whether date-certain triggers that limit OMR reverse flow to ^5000 cubic feet per second could be adjusted to instead use real-time migration information on salmonids.

(2) IMPLEMENTATION.—If the analysis shows that the use of real-time information to trigger OMR flow limitations would improve water supply without causing significant adverse effects to Winter-run Chinook salmon, the real-time management triggers shall be implemented.

## SEC. 204. PILOT PROGRAM TO PROTECT NATIVE ANADROMOUS FISH IN STANISLAUS RIVER.

(a) Definitions.—In this section:

(1) DISTRICTS.—The term “districts” means—

(A) the Oakdale Irrigation District; and

(B) the South San Joaquin Irrigation District.

(2) PILOT PROGRAM.—The term “pilot program” means the nonnative predator removal pilot program established under this section.

(b) Establishment.—The Assistant Administrator, in consultation with the Director and the head of the California Department of Fish and Wildlife, shall, subject to the availability of funding, develop and conduct a pilot nonnative predator fish removal program to remove from the areas in and around the Delta, including the Stanislaus River—

(1) nonnative striped bass;

(2) nonnative smallmouth bass;

(3) nonnative largemouth bass;

(4) nonnative black bass; and

(5) other nonnative predator fish.

(c) Requirements.—The pilot program shall—

(1) be scientifically based;

(2) include methods to quantify, by, among other methods, evaluating the number of juvenile anadromous fish that migrate past the rotary screw trap located at Caswell—

(A) the number and size of predator fish removed each year from the program area;

(B) the impact of the removal on the overall abundance of predator fish in the program area; and

(C) the impact of the removal on the populations of juvenile anadromous fish found in the Stanislaus River and elsewhere;

(3) among other methods, use wire fyke trapping, portable resistance board weirs, and boat electrofishing, which are among the most effective predator collection techniques that minimize effects to native anadromous fish;

(4) be developed by not later than 180 days after the date of enactment of this Act, including the application for all necessary scientific research and species enhancement permits under section 10(a)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)) for the performance of the pilot program;

(5) be implemented on the first business day of the calendar year following the date of issuance of all necessary scientific research and species enhancement permits and funding needed to commence the pilot program; and

(6) be implemented for a period of 7 consecutive calendar years.

(d) Management.—

(1) IN GENERAL.—The Assistant Administrator may and is encouraged to enter into agreements with interested local water districts to jointly develop, implement and evaluate the pilot program.

(2) ADMINISTRATION.—Parties to an agreement under paragraph (1) are encouraged—

(A) to work collaboratively to ensure the performance of the pilot program; and

(B) to discuss and agree on, among other elements, changes in the structure, management, personnel, techniques, strategy, data collection, reporting, and conduct of the pilot program.

(e) Implementation.—

(1) IN GENERAL.—On agreement between the Assistant Administrator and any participating districts, the pilot program may be carried out by—

(A) personnel employed by the districts;

(B) qualified private contractors hired by the districts;

(C) personnel employed by, on loan to, or otherwise assigned to the National Marine Fisheries Service; or

(D) any combination of individuals and entities described in subparagraphs (A) through (C).

(2) PARTICIPATION BY THE NATIONAL MARINE FISHERIES SERVICE.—

(A) IN GENERAL.—If the districts elect pursuant to paragraph (1) to conduct the pilot program using the personnel employed, or qualified private contractors hired, by the districts, the Commissioner may assign an individual described in paragraph (1)(C) to be present for any field activity carried out under the pilot program to ensure compliance with subsection (c).

(B) COSTS.—Subject to subsection (f), the districts shall pay 100 percent of the cost of participation by any individual under subparagraph (A).

(3) TIMING OF ELECTION.—The districts shall—

(A) make an election under paragraph (1) with respect to the following calendar year for each calendar year during which the pilot program is conducted; and

(B) notify the Assistant Administrator of that election by not later than October 15 of the calendar year during which the election is made.

(f) Funding.—

(1) ANNUAL FUNDING.—

(A) IN GENERAL.—The Commissioner, the Assistant Administrator, and the participating districts shall develop a budget and funding plan for the pilot project that will allocate costs appropriately among the participating entities.

(B) NOTIFICATION BY COMMISSIONER.—Not later than December 1 of each calendar year during which the pilot program is conducted, the Commissioner shall submit to the districts an estimate of the cost to be incurred by the Bureau of Reclamation under the pilot program during the following calendar year, if any, including the cost of any data collection and publication under subsection (g).

(C) FAILURE TO PAY.—If an amount equal to the amount described in an estimate

under subparagraph (B) is not provided to the Assistant Administrator by the districts by not later than December 31 of the applicable calendar year—

(i) the Assistant Administrator shall have no obligation to conduct any activity under the pilot program that is otherwise scheduled to be carried out by the Assistant Administrator; and

(ii) the districts shall be prohibited from conducting any activity under the pilot program until the date on which full payment is made by the districts.

(2) ACCOUNTING.—

(A) IN GENERAL.—Not later than September 1 of each calendar year during which the pilot program is conducted, the Assistant Administrator shall provide to the participating entities an accounting of the expenses of the Assistant Administrator under the pilot program during the preceding calendar year.

(B) ESTIMATE DISCREPANCIES.—

(i) SHORTFALL.—If the estimated amount paid by the districts under paragraph (1) for a calendar year was less than the actual costs incurred by the Assistant Administrator—

(I) the districts shall pay to the Assistant Administrator an amount equal to the difference by not later than September 30 of that calendar year; and

(II) the Assistant Administrator shall not be required to carry out any activity otherwise scheduled under the pilot program.

(ii) EXCESS.—If the estimated amount paid by the districts under paragraph (1) for a calendar year was greater than the actual costs incurred by the Assistant Administrator, a credit shall be provided to the districts, which shall be deducted from the estimated payment required to be paid by the districts for the following calendar year.

(g) Data Reporting and Evaluation.—

(1) IN GENERAL.—Not later than the 15th day of each month during which the pilot program is conducted, the Assistant Administrator shall publish on the website of the National Marine Fisheries Service a tabular summary of the raw data collected under the pilot program during the preceding month.

(2) REPORT.—Not later than June 30 of the calendar year following completion of the pilot program, the Assistant Administrator and the districts shall jointly submit a report for peer review that—

(A) discusses the findings and conclusions of the pilot program;

(B) synthesizes the data described in paragraph (1); and

(C) makes recommendations for additional studies and activities.

(h) Permit Process.—

(1) IN GENERAL.—Not later than 1 year after the date of filing of an application by the Assistant Administrator and the districts, the Secretary of the Interior, the Secretary of



Commerce, or both, as applicable, shall issue all necessary scientific research and species enhancement permits under section 10(a)(1) of the Endangered Species Act (16 U.S.C. 1539(a)(1)) for the performance of the pilot program.

(2) NAMED PARTIES.—Each permit under paragraph (1) shall be issued in the name of the Assistant Administrator and the participating districts.

(3) PRIVATE CONTRACTORS.—The districts may delegate the authority under this subsection to any qualified private contractor retained in accordance with subsection (e)(1)(B).

(i) Emergency Environmental Reviews.—To expedite the environmentally beneficial pilot program established under this section for the conservation of threatened and endangered species, the Secretary of the Interior shall consult with the Director of the Council on Environmental Quality in accordance with section 1506.11 of title 40, Code of Federal Regulations (or a successor regulation), to develop alternative arrangements to achieve compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) for purposes of this section.

(j) Sunset.—The authorities provided by this section shall expire on the date that is 7 years after the date of commencement of the pilot program.

## SEC. 205. CALFED INVASIVE SPECIES PILOT PROJECTS IN THE SACRAMENTO-SAN JOAQUIN BAY DELTA AND ITS TRIBUTARIES.

(a) Findings.—Congress finds the following:

(1) The Sacramento-San Joaquin Bay Delta and its tributaries—

(A) is 1 of the largest and most diverse estuaries in the United States;

(B) is a natural treasure and a vital link in the water system of California;

(C) has native biodiversity important to the ecological and economic systems of California, including water deliveries to agriculture, municipalities, and the environment and fisheries industries; and

(D) has river tributaries important for rearing of salmon and steelhead smolts, which experience a high level of predation from nonnative species.

(2) Past, present, and future introductions of invasive species are and will be a major factor in the decline of native pelagic and anadromous endangered or threatened species in the Sacramento-San Joaquin Bay Delta and its tributaries.

(3) More than 250 nonnative aquatic and plant species have been introduced into the Delta and its tributaries, of which at least 185 species have become established and have altered the ecosystem of the Sacramento-San Joaquin Bay Delta watershed.

(4) The Bay Delta Conservation Plan, the Recovery Plan for the Evolutionary Significant Units of Sacramento River Winter-run Chinook Salmon and Central Valley Spring-run Chinook Salmon and the Distinct Population Segment of the Central Valley Steelhead, the Recovery Plan for the Sacramento-San Joaquin Delta Native Fishes, and the multiple 5-year

1 reviews of those plans all highlight that introduced nonnative invasive species are a  
2 significant factor in the decline of native fish species.

3 (5) Those nonnative species, which include invasive aquatic vegetation, predators, and  
4 competitors, directly or indirectly cause biological stress for pelagic and anadromous  
5 endangered or threatened fish species in the Sacramento-San Joaquin Bay Delta and its  
6 tributaries.

7 (6) If threats by nonnative species to native fish species are not addressed, there is a high  
8 probability that native species of the pelagic and anadromous community of the  
9 Sacramento-San Joaquin Bay Delta watershed will go extinct.

10 (7) The Calfed Bay-Delta Authorization Act (title I of Public Law 108–361; 118 Stat.  
11 1681) authorized a program to prevent, control, and eradicate invasive species, but as of the  
12 date of enactment of this Act, the program has not been implemented.

13 (8) A focused pilot program needs to be conducted within the Delta and river tributaries  
14 to reduce threats to native listed species by nonnative species.

15 (9) Reducing nonnative stressors on native listed species will contribute to both native  
16 listed species recovery and lowering the impact on downstream water users as those native  
17 listed species recover.

18 (b) Pilot Projects to Implement Calfed Invasive Species Program.—

19 (1) IN GENERAL.—Not later than January 1, 2016, the Secretary of the Interior, in  
20 collaboration with the Secretary of Commerce and the Director of the California  
21 Department of Fish and Wildlife, shall begin pilot projects to implement the invasive  
22 species program, including prevention, control, and eradication activities, as authorized  
23 under section 103(d)(6)(A)(iv) of the Calfed Bay-Delta Authorization Act (118 Stat. 1690;  
24 Public Law 108–361).

25 (2) REQUIREMENTS.—The pilot projects shall—

26 (A) seek to reduce invasive aquatic vegetation, predators, and other competitors that  
27 are major factors in the decline of native listed pelagic and anadromous species that  
28 occupy the Sacramento and San Joaquin Rivers and their tributaries and the  
29 Sacramento-San Joaquin Bay-Delta; and

30 (B) address how to remove, reduce, or control the effects of species including  
31 Asiatic clams, silversides, gobies, Brazilian water weed, largemouth bass, smallmouth  
32 bass, striped bass, crappie, bluegill, white and channel catfish, and brown bullheads.

33 (3) PHASES.—The activities of the Secretary of the Interior under this subsection shall  
34 consist of the following phases:

35 (A) PHASE 1.—The Secretary of the Interior shall convene a panel of experts,  
36 including experts recommended by the State—

37 (i) to identify the nonnative species having the greatest impact on the viability  
38 of native pelagic and anadromous native listed species;

39 (ii) to identify the nonnative species for which actions to reduce or control the  
40 population is determined to be possible; and



(iii) to design a study to reduce the nonnative species identified in clauses (i) and (ii) and prepare a cost estimate to implement this study.

(B) PHASE 2.—The Secretary of the Interior shall test the general viability of nonnative reduction methods, including either direct predator removal or alteration of channel conditions, or a combination of those methods, through pilot projects at multiple sites in addition to the projects on the Stanislaus River pursuant to section 204, including known hotspots of predator aggregation or activity, such as—

(i) Clifton Court Forebay;

(ii) Central Valley Project intakes;

(iii) Head of Old River;

(iv) Georgiana Slough;

(v) Old and Middle Rivers;

(vi) Franks Tract;

(vii) Paintersville Bridge;

(viii) individual river tributaries important for wild populations of anadromous species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(ix) human-made submerged structures; and

(x) salvage release sites.

(C) PHASE 3.—If feasible, the Secretary of the Interior shall implement nonnative reduction methods at a larger number of sites, incorporating information learned during the first and second phases.

(4) DATA COLLECTION.—The Secretary of the Interior shall collect data associated with the implementation of the projects described in this subsection, and shall specifically collect data on the impact on—

(A) pelagic and anadromous species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(B) water quality; and

(C) water supply.

(5) REVISIONS.—After assessing the data collected as described in paragraph (4), the Secretary of the Interior, in collaboration with the Secretary of Commerce and the Director of the California Department of Fish and Wildlife, shall, if appropriate, annually recommend revisions to the reasonable and prudent alternatives contained in the salmonid biological opinion and the smelt biological opinion, or other administrative Federal requirements governing the operation of the Central Valley Project and the State Water Project, that are likely to produce additional fishery, water quality, and water supply benefits.

(c) Implementation.—The Secretary of the Interior shall implement the Calfed program described in subsection (b) for at least a period of 7 consecutive years beginning on the date of

1 implementation.

2 (d) Reporting Requirements.—The Secretary of the Interior shall provide to the Committee on  
3 Environment and Public Works of the Senate and the Committee on Natural Resources of the  
4 House of Representatives—

5 (1) not later than January 1, 2016, a report containing a description of the projects  
6 described in subsection (b), including the application for all necessary scientific research  
7 and species enhancement permits under section 10(a)(1) of the Endangered Species Act of  
8 1973 (16 U.S.C. 1539(a)(1)), and for the performance of the Calfed invasive species  
9 program;

10 (2) on the completion of Phase 1 as described in subsection (b)(3)(A), a report describing  
11 the implementation and cost effectiveness of that phase;

12 (3) not later than 2 years after the project under this subsection begins, a report  
13 describing—

14 (A) the progress of the eradication of the nonnative species in the Delta and its  
15 tributaries;

16 (B) how those efforts have helped the Recovery Plans for endangered and threatened  
17 anadromous and pelagic species in the Delta watershed; and

18 (C) the associated cost effectiveness of each control measure; and

19 (4) after the pilot projects are complete, a report describing the results of the program,  
20 including recommendations on whether the program should be continued, how the program  
21 may be taken to full scale in the most cost-effective manner, and how a mitigation program  
22 for the Central Valley Project allowable under section 10(a)(1) of the Endangered Species  
23 Act of 1973 (16 U.S.C. 1539(a)(1)) could be implemented.

24 (e) Emergency Environmental Reviews.—To expedite the environmentally beneficial program  
25 for the conservation of threatened and endangered species carried out under this section, the  
26 Secretary of the Interior shall consult with the Council on Environmental Quality in accordance  
27 with section 1506.11 of title 40, Code of Federal Regulations (including successor regulations) to  
28 develop alternative arrangements for the program to comply with the National Environmental  
29 Policy Act of 1969 (42 U.S.C. 4321 et seq.).

## 30 SEC. 206. MARK FISHERY AND HARVEST 31 MANAGEMENT.

32 (a) In General.—To minimize the impact of harvest and project operations on salmonids,  
33 contribute to recovery of stocks of endangered or threatened species, improve management of  
34 fish stocks of both hatchery and natural origins, and to minimize risk of a natural origin fall  
35 Chinook listing under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), not later  
36 than 60 days after the date of enactment of this Act, the Assistant Administrator, in partnership  
37 with the Director of the California Department of Fish and Wildlife and persons responsible for  
38 funding Central Valley hatcheries, shall convene an independent science panel to follow up on  
39 the 2012 recommendations of the California Hatchery Scientific Review Group by providing an  
40 assessment of costs and benefits associated with marking, with tagging, and with a program that  
41 combines marking and tagging Central Valley hatchery produced fall Chinook.

(b) Administration.—The Assistant Administrator shall ensure that the independent science panel—

(1) includes an appropriate number of scientific experts as determined and appointed by the Assistant Administrator, and an equal number of scientific experts selected by entities responsible for funding California salmon mitigation hatcheries;

(2) considers and gives equal weight to both inland and ocean monitoring and management needs, including harvest; and

(3) completes the review by December 31, 2015.

(c) Implementation.—Not later than October 1, 2018, the Assistant Administrator shall assess and implement harvest management strategies to provide better protection for sensitive Chinook stocks while still allowing for harvest of hatchery fall Chinook.

## SEC. 207. NEW ACTIONS TO BENEFIT CENTRAL VALLEY SALMONIDS.

Not later than March 1, 2016, under similar terms and conditions as successful United States Fish and Wildlife Service programs on Clear Creek and Battle Creek, the Director, in collaboration with the Director of the California Department of Fish and Wildlife, the Commissioner of the Bureau of Reclamation, or both, shall issue necessary permits and otherwise facilitate the deployment of temporary in-river structures—

(1) to protect and grow natural origin spring Chinook populations by blocking access to hatchery origin fall Chinook; and

(2) to prevent hatchery origin Chinook salmon and steelhead from reaching spawning grounds where the species will compete for spawning with natural origin fish listed under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

## TITLE III—OPERATIONAL FLEXIBILITY AND DROUGHT RELIEF

### SEC. 301. FINDINGS.

Based on the congressional findings in section 2, Congress finds that it is appropriate and necessary for Federal agencies to exercise the maximum amount of flexibility provided to the agencies under applicable laws (including regulations) to maximize delivery of water supplies while providing the same or better levels of protection for species as in effect on the date of enactment of this Act.

### SEC. 302. DEFINITIONS.

In this title:

(1) CENTRAL VALLEY PROJECT.—The term “Central Valley Project” has the meaning given the term in section 3403 of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4707).

(2) KLAMATH PROJECT.—The term “Klamath Project” means the Bureau of Reclamation

project in the States of California and Oregon, as authorized under the Act of June 17, 1902 (32 Stat. 388, chapter 1093).

(3) RECLAMATION PROJECT.—The term “Reclamation Project” means a project constructed pursuant to the authorities of the reclamation laws and whose facilities are wholly or partially located in the State.

(4) SECRETARIES.—The term “Secretaries” means—

(A) the Administrator of the Environmental Protection Agency;

(B) the Secretary of Agriculture;

(C) the Secretary of Commerce; and

(D) the Secretary of the Interior.

## SEC. 303. OPERATIONAL FLEXIBILITY IN TIMES OF DROUGHT.

(a) Water Supplies.—

(1) IN GENERAL.—In response to a declaration of a state of drought emergency by the Governor of California and for the period of time such a drought declaration remains in effect, the Secretaries shall provide the maximum quantity of water supplies practicable to Central Valley Project agricultural, municipal and industrial, and refuge service and repayment contractors, State Water Project contractors, and any other Indian tribe, locality, or municipality in the State, by approving, consistent with applicable laws (including regulations), projects and operations to provide additional water supplies as quickly as practicable based on available information to address the emergency conditions.

(2) APPLICATION.—Paragraph (1) applies to projects or operations involving the Klamath Project if the projects or operations would benefit Federal water contractors in the State.

(b) Administration.—In carrying out subsection (a), the Secretaries shall, consistent with applicable laws (including regulations)—

(1) issue all necessary permit decisions under the authority of the Secretaries not later than 30 days after the date on which the Secretaries receive a completed application from the State to place and use temporary barriers or operable gates in Delta channels to improve water quantity and quality for the State Water Project and the Central Valley Project south of Delta water contractors and other water users, on the condition that the barriers or operable gates—

(A) provide benefits for species protection and in-Delta water user water quality; and

(B) are designed so that formal consultations under section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) are not necessary;

(2) require the Director of the United States Fish and Wildlife Service and the Commissioner of Reclamation—

(A) to complete, not later than 30 days after the date on which the Director or the Commissioner receives a complete written request for water transfer associated with

voluntarily following nonpermanent crops in the State, all requirements under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) necessary to make final permit decisions on the request; and

(B) to grant any water transfer request described in subparagraph (A) to maximize the quantity of water supplies available for nonhabitat uses, on the condition that the following and associated water transfer are in compliance with applicable Federal laws (including regulations);

(3) adopt a 1:1 inflow to export ratio for the increment of increased flow of the San Joaquin River, as measured as a 3-day running average at Vernalis during the period beginning on April 1, and ending on May 31, resulting from voluntary transfers and exchanges of water supplies, on the condition that a proposed transfer or exchange under this paragraph may only proceed if the Secretary of the Interior determines that—

(A) the environmental effects of the proposed transfer or exchange are consistent with effects permissible under applicable law (including regulations); and

(B) Delta conditions are suitable to allow movement of the transfer water through the Delta consistent with the permitted rights of the Commissioner of Reclamation; and

(4) provide additional priority for eligible WaterSMART projects that address drought conditions, including projects that—

(A) provide emergency drinking and municipal water supplies to localities in a quantity necessary to meet minimum public health and safety needs;

(B) prevent the loss of permanent crops;

(C) minimize economic losses resulting from drought conditions; or

(D) provide innovative water conservation tools and technology for agriculture and urban water use that can have immediate water supply benefits.

(c) Accelerated Project Decision and Elevation.—

(1) IN GENERAL.—On request by the Governor of the State, the heads of Federal agencies shall use the expedited procedures under this subsection to make final decisions relating to a Federal project or operation if the purpose of the project or operation is to provide relief for emergency drought conditions pursuant to subsections (a) and (b).

(2) REQUEST FOR RESOLUTION.—

(A) IN GENERAL.—On request by the Governor of the State, the head of a Federal agency referenced in paragraph (1), or the head of another Federal agency responsible for carrying out a review of a project, as applicable, the Secretary of the Interior shall convene a final project decision meeting with the heads of all relevant Federal agencies to decide whether to approve a project to provide relief for emergency drought conditions.

(B) MEETING.—The Secretary of the Interior shall convene a meeting requested under subparagraph (A) not later than 7 days after the date on which the meeting request is received.

(3) NOTIFICATION.—On receipt of a request for a meeting under paragraph (2), the Secretary of the Interior shall notify the heads of all relevant Federal agencies of the request, including information on the project to be reviewed and the date of the meeting.

(4) DECISION.—Not later than 10 days after the date on which a meeting is requested under paragraph (2) and subject to subsection (e)(2), the head of the relevant Federal agency shall issue a final decision on the project.

(5) MEETING CONVENED BY SECRETARY.—The Secretary of the Interior may convene a final project decision meeting under this subsection at any time, at the discretion of the Secretary, regardless of whether a meeting is requested under paragraph (2).

(d) Application.—To the extent that a Federal agency, other than the agencies headed by the Secretaries, has a role in approving projects described in subsections (a) and (b), this section shall apply to those Federal agencies.

(e) Limitation.—Nothing in this section authorizes the heads of applicable Federal agencies to approve projects—

(1) that would otherwise require congressional authorization; or

(2) without following procedures required by applicable law.

(f) 2015 Drought Plan.—The Secretary of Commerce and the Secretary of the Interior, in consultation with appropriate State officials, shall develop a drought operations plan for calendar year 2015 that is consistent with this section and other provisions of this Act intended to provide additional water supplies that could be of assistance during the drought in effect as of the date of enactment of this Act.

## SEC. 304. OPERATION OF CROSS-CHANNEL GATES.

(a) In General.—The Secretary of Commerce and the Secretary of the Interior shall jointly—

(1) authorize and implement activities to ensure that the Delta Cross Channel Gates remain open to the maximum extent practicable using findings from the United States Geological Survey on diurnal behavior of juvenile salmonids, timed to maximize the peak flood tide period and provide water supply and water quality benefits for the duration of the drought emergency declaration of the State, consistent with operational criteria and monitoring criteria developed pursuant to the Order Approving a Temporary Urgency Change in License and Permit Terms in Response to Drought Conditions of the California State Water Resources Control Board, effective January 31, 2014 (or a successor order) and other authorizations associated with that order;

(2) with respect to the operation of the Delta Cross Channel Gates described in paragraph (1), collect data on the impact of that operation on—

(A) species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(B) water quality; and

(C) water supply;

(3) consistent with knowledge gained from activities carried out during 2014, collaborate



1 with the California Department of Water Resources to install a deflection barrier at  
2 Georgiana Slough in coordination with Delta Cross Channel Gate diurnal operations to  
3 protect migrating salmonids;

4 (4) evaluate the combined salmonid survival in light of activities carried out pursuant to  
5 paragraphs (1) through (3) in deciding how to operate the Delta Cross Channel gates to  
6 enhance salmonid survival and water supply benefits; and

7 (5) not later than May 15, 2015, submit to the Committee on Energy and Natural  
8 Resources of the Senate and the Committee on Natural Resources of the House of  
9 Representatives a written report on the extent to which the gates are able to remain open.

10 (b) Recommendations.—

11 (1) IN GENERAL.—After assessing the information collected under subsection (a), the  
12 Secretary of the Interior shall recommend revisions to the operation of the Delta Cross-  
13 Channel Gates, to the Central Valley Project, and to the State Water Project, including, if  
14 appropriate, any reasonable and prudent alternatives contained in the biological opinion  
15 issued by the National Marine Fisheries Service on June 4, 2009, that are likely to produce  
16 fishery, water quality, and water supply benefits.

17 (2) COORDINATION.—The Secretary of the Interior shall coordinate with the State Water  
18 Resources Control Board to seek consistent direction for the operation of the Delta Cross-  
19 Channel Gates under Federal and State law, including Water Right Decision 1641.

20 **SEC. 305. FLEXIBILITY FOR EXPORT/INFLOW RATIO.**

21 In response to the declaration of a state of drought emergency by the Governor of the State  
22 and for the period of time such a drought declaration remains in effect, the Commissioner of the  
23 Bureau of Reclamation shall continue to vary the averaging period of the Delta Export/Inflow  
24 ratio pursuant to the California State Water Resources Control Board decision D1641, approved  
25 in the March 2014 Temporary Urgency Change Order—

26 (1) to operate to a 35 percent Export/Inflow ratio with a 3 day averaging period on the  
27 rising limb of a Delta inflow hydrograph; and

28 (2) to operate to a 14 day averaging period on the falling limb of the Delta inflow  
29 hydrograph.

30 **SEC. 306. EMERGENCY ENVIRONMENTAL REVIEWS.**

31 To minimize the time spent carrying out environmental reviews and to deliver water quickly  
32 that is needed to address emergency drought conditions in the State during the duration of an  
33 emergency drought declaration, the head of each applicable Federal agency shall, in carrying out  
34 this Act, consult with the Council on Environmental Quality in accordance with section 1506.11  
35 of title 40, Code of Federal Regulations (including successor regulations), to develop alternative  
36 arrangements to comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et  
37 seq.) during the emergency.

38 **SEC. 307. PRIORITIZING STATE REVOLVING FUNDS**  
39 **DURING DROUGHTS.**

(a) In General.—This section shall apply for each of the fiscal years during which an emergency drought declaration of the State is in effect.

(b) Action by Administrator.—The Administrator of the Environmental Protection Agency, in implementing the processes and programs under the State water pollution control revolving funds established under title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) and the State drinking water treatment revolving loan funds established under section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12), shall, for those projects that are eligible to receive assistance under section 603 of the Federal Water Pollution Control Act (33 U.S.C. 1383) or section 1452(a)(2) of the Safe Drinking Water Act (42 U.S.C. 300j–12(a)(2))—

(1) issue a determination of waivers within 30 days of the conclusion of the informal public comment period pursuant to section 436(c) of title IV of division G of Public Law 113–76; and

(2) authorize, at the request of the State, 40-year financing for assistance under section 603(d)(2) of the Federal Water Pollution Control Act (33 U.S.C. 1383(d)(2)) or section 1452(f)(2) of the Safe Drinking Water Act (42 U.S.C. 300j–12(f)(2)).

(c) Effect of Section.—Nothing in this section authorizes the Administrator of the Environmental Protection Agency to modify any funding allocation, funding criteria, or other requirement relating to State water pollution control revolving funds established under title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) and the State drinking water treatment revolving loan funds established under section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12) for any other State.

## SEC. 308. INCREASED FLEXIBILITY FOR REGULAR PROJECT OPERATIONS.

The Secretaries shall, consistent with applicable laws (including regulations)—

(1) to the maximum extent practicable, based on the availability of water and without causing land subsidence or violating water quality standards—

(A) help meet the contract water supply needs of Central Valley Project refuges through the improvement or installation of water conservation measures, water conveyance facilities, and wells to use groundwater resources, on the condition that those activities may only be accomplished by using funding made available under the Water Assistance Program or the WaterSMART program of the Department of the Interior; and

(B) make available to Central Valley Project contractors a quantity of Central Valley Project surface water obtained from the activities carried out under subparagraph (A);

(2) contingent on funding, in coordination with the Secretary of Agriculture, enter into an agreement with the National Academy of Sciences to conduct a comprehensive study, to be completed not later than 1 year after the date of enactment of this Act, on the effectiveness and environmental impacts of saltcedar biological control efforts on increasing water supplies and improving riparian habitats of the Colorado River and its principal tributaries, in the State and elsewhere;

(3) in coordination with the California Department of Water Resources and the California



Department of Fish and Wildlife, implement offsite upstream projects in the Delta and upstream Sacramento River and San Joaquin basins that offset the effects on species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) due to activities carried out pursuant this Act, as determined by the Secretaries;

(4) manage reverse flow in the Old and Middle Rivers, as prescribed by the smelt biological opinion and salmonid biological opinion, or any successor biological opinions, to minimize water supply reductions for the Central Valley Project and the State Water Project, and issue guidance not later than December 31, 2015, directing the employees of those agencies to take all steps necessary to manage flow in accordance with this paragraph;

(5) as soon as practicable after the date of enactment of this Act and pursuant to existing authority available to the Secretary of the Interior, participate in, issue grants, or otherwise provide funding for pilot projects to increase water in reservoirs in regional river basins experiencing extreme, exceptional, or sustained drought that have a direct impact on the water supply of the State, including the Colorado River Basin, on the condition that any participation, grant, or funding by the Secretary of the Interior with respect to the Upper Division shall be with or to the respective State; and

(6) use all available scientific tools to identify any changes to real-time operations of the Bureau of Reclamation, State, and local water projects that could result in the availability of additional water supplies.

## SEC. 309. TEMPORARY OPERATIONAL FLEXIBILITY FOR FIRST FEW STORMS OF 2015 WATER YEAR.

(a) Findings.—Congress finds the following:

(1) During the 2014 water year operations of the Central Valley Project and the State Water Project, the incidental take of—

(A) adult Delta smelt was zero;

(B) juvenile Delta smelt was 78 (7.7 percent of the incidental take limit);

(C) winter run Chinook was 339 (1.4 percent of the incidental take limit);

(D) spring run Chinook was zero; and

(E) steelhead was 261 (8.7 percent of the incidental take limit).

(2) The Central Valley Project and State Water Project exceeded an Old and Middle River flow of ^5,000 cubic feet per second over a 14-day average for brief periods after 3-storm events in February and March 2014 as a result of increased pumping, but did not cause substantially increased take of smelt or salmon.

(3) Hydrological conditions in dry years, such as the 2014 water year, have not triggered water pumping restrictions pursuant to the smelt biological opinion.

(4) The Secretaries should be allowed more flexibility to increase pumping levels without causing significant risk to the listed species or weakening other environmental protections.

(5) Given the severe drought conditions in the State, significant groundwater withdrawals for irrigation due to lack of surface water supplies, and the depletion of water supplies in

reservoirs, it is imperative that the Secretaries exercise the flexibility provided in this section to capture the maximum quantity of storm flows when storm flows occur in the 2015 water year, and provide for the diversion of those water supplies to the Central Valley Project and State Water Project so that agricultural operations, businesses, and homes in drought-stricken areas will have an opportunity to bolster meager supplies of water when water is available.

(b) Goal.—Consistent with avoiding additional adverse effects on listed fish species beyond the range of adverse effects authorized under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and other environmental protections described in subsection (e), the Secretaries shall authorize the Central Valley Project and the State Water Project to operate at combined levels that result in Old and Middle River flows at up to a <sup>^</sup>7500 cubic feet per second (based on United States Geological Survey gauges on Old and Middle Rivers) daily average for up to 21 cumulative days after October 1, 2014, as described in subsection (c).

(c) Days of Temporary Operational Flexibility.—The temporary operational flexibility described in subsection (b) shall be authorized on days that the California Department of Water Resources determines the daily average river flow of the Sacramento River is at, or above, 17,000 cubic feet per second, as measured at the Sacramento River at Freeport gauge maintained by the United States Geological Survey.

(d) Compliance With Endangered Species Act Authorizations.—In carrying out this section, the Secretaries may continue to impose any requirements under the biological opinions during any period of temporary operational flexibility as the Secretaries determine are reasonably necessary to avoid additional adverse effects on listed fish species beyond the range of adverse effects authorized under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(e) Other Environmental Protections.—

(1) IN GENERAL.—The actions of the Secretaries under this section shall be consistent with applicable regulatory requirements under State law, including State Water Resources Control Board Decision 1641, as that decision may be implemented in any given year.

(2) ADJUSTED RATES ALLOWED.—During the first flush of sediment out of the Delta during the 2015 water year, Old and Middle River flow may be managed at rates less negative than <sup>^</sup>5000 cubic feet per second for a minimum duration to avoid movement of adult Delta smelt to areas in the southern Delta that would be likely to increase entrainment at Central Valley Project and State Water Project pumping plants.

(3) SALMONID BIOLOGICAL OPINION.—This section shall not have any effect on the applicable requirements of the salmonid biological opinion during the period beginning on April 1, 2015 and ending May 31, 2015, unless the Secretary of Commerce finds that some or all of the applicable requirements may be adjusted during the time period to provide emergency water supply relief without resulting in additional adverse effects beyond the adverse effects authorized under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(4) MONITORING AND DATA GATHERING.—During the period in which operations are carried out under this section, the Commissioner of Reclamation, in coordination with the Director of the United States Fish and Wildlife Service, the Assistant Administrator of the National Marine Fisheries Service, and the head of the California Department of Fish and

Wildlife, shall undertake a monitoring program and other data gathering to ensure take limits levels are not exceeded, and to identify potential actions necessary to mitigate any impacts of the temporary operational flexibility to species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(5) MITIGATING IMPACTS.—The Commissioner of Reclamation may take any action, including the transfer of appropriated funds between accounts that, in the judgment of the Commissioner, is necessary to mitigate the impacts of the operations carried out under this section, on the condition that the mitigation is consistent with the requirements of this section.

(f) Technical Adjustments to Target Period.—If, before temporary operational flexibility has been implemented on 21 cumulative days as described in subsection (b), the Secretaries operate the Central Valley Project and the State Water Project combined at levels that result in Old and Middle River flows less negative than ^7500 cubic feet per second during days of temporary operational flexibility as defined in subsection (c), the duration of the operation shall not be counted toward the 21 cumulative days specified in subsection (b).

(g) Emergency Consultation; Effect on Running Averages.—

(1) IN GENERAL.—If necessary to implement this section, the Commissioner of Reclamation shall use the emergency consultation procedures under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) (including the implementing regulations at section 402.05 of title 50, Code of Federal Regulations (or successor regulations)) to temporarily adjust the operating criteria under the biological opinions, solely for the 21 days of temporary operational flexibility and—

(A) not more than necessary to achieve the purposes of this section consistent with the environmental protections described in subsections (d) and (e); and

(B) including, as appropriate, adjustments to ensure that the actual flow rates during the periods of temporary operational flexibility do not count toward the 5-day and 14-day running averages of tidally filtered daily Old and Middle River flow requirements under the biological opinions.

(2) PROHIBITION.—Following the conclusion of the 21 days of temporary operational flexibility, the Commissioner of Reclamation shall not reinitiate consultation on the adjusted operations described in paragraph (1) if the effects on listed fish species of the operations under this section remain within the range of the effects authorized under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(h) Level of Detail Required for Analysis.—In articulating the determinations required under this section, the Secretaries shall fully satisfy the requirements of this section but shall not be expected to provide a greater level of supporting detail for the analysis than feasible to provide within the short timeframe permitted for timely decisionmaking in response to changing conditions in the Delta.

(i) Duration.—The authority to carry out this section shall expire on September 30, 2015.

## SEC. 310. EXPEDITING WATER TRANSFERS.

(a) In General.—Section 3405(a) of the Central Valley Project Improvement Act (Public Law

102–575; 106 Stat. 4709(a)) is amended—

(1) by redesignating paragraphs (1) through (3) as paragraphs (4) through (6), respectively;

(2) in the matter preceding paragraph (4) (as so designated)—

(A) in the first sentence, by striking “In order to” and inserting the following:

“(1) IN GENERAL.—In order to”; and

(B) in the second sentence, by striking “Except as provided herein” and inserting the following:

“(3) TERMS.—Except as otherwise provided in this section”; and

(3) by inserting before paragraph (3) (as so designated) the following:

“(2) EXPEDITED TRANSFER OF WATER.—The Secretary shall take all necessary actions to facilitate and expedite transfers of Central Valley Project water in accordance with—

“(A) this Act;

“(B) any other applicable provision of the reclamation laws; and

“(C) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).”;

(4) in paragraph (4) (as so designated)—

(A) in subparagraph (A), by striking “to combination” and inserting “or combination”; and

(B) by striking “3405(a)(2) of this title” each place it appears and inserting “(5)”; and

(5) in paragraph (5) (as so designated), by adding at the end the following:

“(E) The contracting district from which the water is coming, the agency, or the Secretary shall determine if a written transfer proposal is complete within 45 days after the date of submission of the proposal. If the contracting district or agency or the Secretary determines that the proposal is incomplete, the district or agency or the Secretary shall state with specificity what must be added to or revised for the proposal to be complete.”; and

(6) in paragraph (6) (as so designated), by striking “3405(a)(1)(A)-(C), (E), (G), (H), (I), (L), and (M) of this title” and inserting “(A) through (C), (E), (G), (H), (I), (L), and (M) of paragraph (4)”.

(b) Conforming Amendments.—The Central Valley Project Improvement Act (Public Law 102–575) is amended—

(1) in section 3407(c)(1) (106 Stat. 4726), by striking “3405(a)(1)(C)” and inserting “3405(a)(4)(C)”; and

(2) in section 3408(i)(1) (106 Stat. 4729), by striking “3405(a)(1) (A) and (J) of this title” and inserting “subparagraphs (A) and (J) of section 3405(a)(4)”.

## SEC. 311. WARREN ACT CONTRACTS.

[To be supplied.]

## SEC. 312. ADDITIONAL WARREN ACT CONTRACTS.

[To be supplied.]

## TITLE IV—INCREASING WATER STORAGE

### SEC. 401. FINDINGS.

Congress finds that—

(1) the record drought conditions being experienced in the State as of the date of enactment of this Act are—

(A) expected to recur in the future; and

(B) likely to do so with increasing frequency;

(2) water storage is an indispensable and integral part of any solution to address the long-term water challenges of the State;

(3) Congress authorized relevant feasibility studies for 4 water storage projects in the State, including projects for—

(A) enlargement of Shasta Dam in Shasta County under section 2(a) of Public Law 96–375 (94 Stat. 1506), as reaffirmed under section 103(d)(1)(A)(i)(I) of the Calfed Bay-Delta Authorization Act (Public Law 108–361; 118 Stat. 1684);

(B) enlargement of Los Vaqueros Reservoir in Contra Costa County under section 215 of Public Law 108–7 (117 Stat. 147), as reaffirmed under section 103(d)(1)(A)(i)(II) of the Calfed Bay-Delta Authorization Act (Public Law 108–361; 118 Stat. 1684);

(C) construction of North-of-Delta Offstream Storage (Sites Reservoir) in Colusa County under section 215 of Public Law 108–7 (117 Stat. 147), as reaffirmed under section 103(d)(1)(A)(ii)(I) of the Calfed Bay-Delta Authorization Act (Public Law 108–361; 118 Stat. 1684); and

(D) construction of the Upper San Joaquin River storage (Temperance Flat) in Fresno and Madera Counties under section 215 of Public Law 108–7 (117 Stat. 147), as reaffirmed under section 103(d)(1)(A)(ii)(II) of the Calfed Bay-Delta Authorization Act (Public Law 108–361; 118 Stat. 1684);

(4)(A) as of the date of enactment of this Act, it has been more than 10 years since the authorization of the feasibility studies referred to in paragraph (3); but

(B) complete and final feasibility studies have not been prepared for any of those water storage projects;

(5) as of August 2014, only 2 of the 4 projects referred to in paragraph (3) have completed draft feasibility studies;

(6) the slow pace of work on completion of the feasibility studies for those 4 water storage projects is—

(A) unjustified; and

(B) of deep concern; and

(7) there is significant public interest in, and urgency with respect to, completing all feasibility studies and environmental reviews for the water storage projects referred to in paragraph (3), given the critical need for that infrastructure to address the water challenges of the State.

## SEC. 402. CALFED STORAGE FEASIBILITY STUDIES.

(a) In General.—Notwithstanding subparagraph (B)(i) of section 103(d)(1) of the Calfed Bay-Delta Authorization Act (Public Law 108–361; 118 Stat. 1684), the Secretary of the Interior, acting through the Commissioner of Reclamation (referred to in this title as the “Secretary”), shall complete a final feasibility study and any other applicable environmental review documents for the project described in—

(1) subparagraph (A)(i)(I) of that section by not later than December 31, 2014; and

(2) subparagraph (A)(ii)(II) of that section by not later than July 31, 2015.

(b) Environmental Reviews.—In carrying out subsection (a), the Secretary—

(1) shall ensure that—

(A) all applicable reviews, including reviews required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), are completed as expeditiously as practicable; and

(B) the shortest applicable process under that Act is used, including in the completion of—

(i) feasibility studies;

(ii) draft environmental impact statements; and

(iii) final environmental impact statements; and

(2) shall not be required to complete a draft or final environmental impact statement if the Commissioner of Reclamation determines, and the Secretary concurs, that the project fails to meet applicable Federal cost-benefit requirements or standards.

(c) Accountability.—

(1) IN GENERAL.—If the Secretary determines that an environmental review document for the water storage projects referred to in section 103(d)(1) of the Calfed Bay-Delta Authorization Act (Public Law 108–361; 118 Stat. 1684) will not be completed according to the schedule specified in subsection (a), not later than 14 days after the determination, the Secretary shall notify the Committee on Energy and Natural Resources and the Subcommittee on Energy and Water Development of the Committee on Appropriations of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives.

(2) INCLUSIONS.—The notification shall include—

(A) an explanation of the delay;



(B) the anticipated length of the delay and the revised completion date; and

(C) the steps that the Secretary will take to mitigate the delay, including, at a minimum, a request to reprogram existing funds appropriated to the Secretary to meet the revised completion deadline.

(d) Requirement.—The Secretary shall carry out the procedures described in subsection (c) for each subsequent delay beyond the revised completion deadline.

## SEC. 403. WATER STORAGE PROJECT CONSTRUCTION.

(a) In General.—The Secretary may partner or enter into an agreement on the water storage projects identified in section 103(d)(1) of the Calfed Bay-Delta Authorization Act (Public Law 108–361; 118 Stat. 1684) (and Acts supplemental and amendatory to the Act) with local joint powers authorities formed pursuant to State law by irrigation districts and other local water districts and local governments within the applicable hydrologic region, to advance those projects.

[(b) Placeholder – authorization issue.]

## SEC. 404. OTHER STORAGE FEASIBILITY STUDIES.

(a) Definition of Qualifying Project.—In this section, the term “qualifying project” means any new surface water storage project constructed on land administered by the Department of the Interior in a State in which the Bureau of Reclamation has jurisdiction, but excluding any easement, right-of-way, lease, or private holding located on such land.

(b) Lead Agency.—

(1) QUALIFYING PROJECTS WITHIN JURISDICTION OF BUREAU OF RECLAMATION.—The Bureau of Reclamation shall serve as the lead agency for purposes of coordinating all reviews, analyses, opinions, statements, permits, licenses, and other approvals or decisions required under Federal law (including regulations) to construct qualifying projects within the jurisdiction of the Bureau.

(2) QUALIFYING PROJECTS OUTSIDE JURISDICTION OF BUREAU OF RECLAMATION.—If the site of a qualifying project is not located in a State in which the Bureau of Reclamation has jurisdiction, the Secretary shall, by not later than 45 days after the date of receipt of an application for the qualifying project—

(A) designate an alternate agency within the Department of the Interior to serve as the lead agency for purposes of coordinating all reviews, analyses, opinions, statements, permits, licenses, and other approvals or decisions required under Federal law (including regulations) to construct the qualifying project; or

(B) in consultation with the heads of other Federal departments and agencies, identify the appropriate lead agency for the qualifying project.

(c) Cooperating Agencies.—

(1) FEDERAL DEPARTMENTS AND AGENCIES.—The lead agency designated under paragraph (1) or (2) of subsection (b) shall—

(A) as soon as practicable after receipt of an application for a qualifying project,

1 identify any Federal department or agency that may have jurisdiction over a review,  
2 permit, license, approval, or decision required for the qualifying project under  
3 applicable Federal laws (including regulations); and

4 (B) as soon as practicable after the date of identification under subparagraph (A)—

5 (i) notify each applicable department or agency of the identification; and

6 (ii) designate the department or agency as a cooperating agency, unless the  
7 department or agency—

8 (I) has no jurisdiction or authority with respect to the qualifying project;

9 (II) has no expertise or information relevant to the qualifying project or  
10 any review, permit, license, approval, or decision associated with the  
11 qualifying project; or

12 (III) does not intend—

13 (aa) to submit comments regarding the qualifying project; or

14 (bb) to conduct any review of the qualifying project or make any  
15 decision with respect to the qualifying project in a manner other than in  
16 cooperation with the Bureau of Reclamation.

17 (2) STATES.—A State in which a qualifying project is proposed to be carried out may  
18 elect, consistent with Federal and State law, to participate as a cooperating agency, if the  
19 lead agency designated for the proposed qualifying project under paragraph (1) or (2) of  
20 subsection (b) determines that the applicable agency of the State—

21 (A) has jurisdiction over the qualifying project under applicable Federal or State  
22 law;

23 (B) is required to conduct or issue a review of the qualifying project; and

24 (C) is required to make a determination regarding issuing a permit, license, or  
25 approval of the qualifying project.

26 (d) Duties of Lead Agency.—

27 (1) IN GENERAL.—Not later than 30 days after the date of receipt of an application for  
28 approval of a qualifying project, the lead agency shall hold a meeting among the applicant,  
29 the lead agency, and all cooperating agencies to establish, with respect to the qualifying  
30 project, all applicable—

31 (A) requirements;

32 (B) review processes; and

33 (C) stakeholder responsibilities.

34 (2) SCHEDULE.—

35 (A) ESTABLISHMENT.—Not later than 30 days after the date of the meeting under  
36 paragraph (1), the lead agency, in consultation with the attendees of the meeting, shall  
37 establish a schedule for completion of the qualifying project, taking into consideration,  
38 among other relevant factors—



1 (i) the responsibilities of cooperating agencies under applicable laws and  
2 regulations;

3 (ii) the resources available to the cooperating agencies and non-Federal project  
4 stakeholders;

5 (iii) the overall size and complexity of the qualifying project;

6 (iv) the overall schedule for, and cost of, the qualifying project; and

7 (v) the sensitivity of the natural and historic resources that may be affected by  
8 the qualifying project.

9 (B) REQUIREMENTS.—On establishment of a schedule for a qualifying project under  
10 subparagraph (A), the lead and cooperating agencies shall—

11 (i) to the maximum extent practicable, adhere to the schedule; and

12 (ii) submit to the Committee on Environment and Public Works of the Senate  
13 and the Committee on Natural Resources of the House of Representatives on a  
14 semiannual basis a report describing any delays in the schedule, including a  
15 description of—

16 (I) the reasons for the delay;

17 (II) the actions that the lead and cooperating agencies will take to  
18 minimize the delay; and

19 (III) a revised schedule for the qualifying project, if applicable.

20 (e) Environmental Reviews.—

21 (1) SINGLE, UNIFIED ENVIRONMENTAL REVIEW DOCUMENT.—

22 (A) IN GENERAL.—The lead agency with respect to a qualifying project, in  
23 consultation with appropriate stakeholders and cooperating agencies, shall determine  
24 whether a single, unified environmental review document relating to the qualifying  
25 project is sufficient to comply with applicable Federal laws (including regulations),  
26 including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

27 (B) ACTION ON DECLINATION.—If, after consultation under subparagraph (A), a lead  
28 agency determines not to adopt a single, unified environmental review document  
29 relating to a qualifying project—

30 (i) the lead agency shall—

31 (I) document the reasons for the determination; and

32 (II) submit to the Secretary a report describing those reasons; and

33 (ii) the Secretary may require the adoption of a single, unified document at the  
34 discretion of the Secretary, based on good cause.

35 (2) ENVIRONMENTAL ASSESSMENT.—Except as provided in paragraph (4), if the lead  
36 agency with respect to a qualifying project, in consultation with cooperating agencies,  
37 determines that an environmental assessment is sufficient to comply with the requirements  
38 of this subsection and other applicable Federal laws (including regulations)—

(A) the public comment period for a draft environmental assessment shall be not more than 60 days after the date of publication in the Federal Register of notice of the public issuance of that draft; and

(B) the lead agency shall issue the final environmental assessment by not later than 180 days after the end of the period for public comments on the draft environmental assessment.

(3) ENVIRONMENTAL IMPACT STATEMENT.—Except as provided in paragraph (4), if the lead agency with respect to a qualifying project, in consultation with cooperating agencies, determines that an environmental impact statement is required to comply with the requirements of this subsection and other applicable Federal laws (including regulations)—

(A) the public comment period for a draft environmental impact statement shall be not more than 60 days after the date of publication in the Federal Register of notice of the public issuance of that draft; and

(B) the lead agency shall issue the final environmental impact statement by not later than 1 year after the end of the period for public comments on the draft environmental assessment.

(4) MODIFICATION OF SCHEDULE.—

(A) IN GENERAL.—In carrying out paragraphs (2) and (3), the lead agency with respect to a qualifying project may modify the schedule of the qualifying project if—

(i) the lead agency can demonstrate good cause, such as the need for additional time to comply with other statutory or regulatory requirements (other than the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)); and

(ii) the head of the lead agency submits to Congress a written determination describing the cause and reasons for the modification by not later than 30 days before the original scheduled deadline; or

(ii) the lead agency, the project sponsor, the joint lead agency (if applicable), and all participating and cooperating agencies agree to the modification.

(B) LIMITATION.—Unless the requirements of clause (i) or (ii) of subparagraph (A) are met, no modification under subparagraph (A) shall result in the postponement of the issuance of—

(i) a final environmental assessment by more than 1 year; or

(ii) a final environmental impact statement by more than 2 years.

(C) REVISED SCHEDULE.—If a modification is made pursuant to this paragraph, the lead agency shall publish and adhere to the applicable revised schedule, except as provided in clause (i) or (ii) of subparagraph (A).

(5) REQUIREMENTS.—On commencement of the environmental review process under this subsection, the lead and cooperating agencies shall, as soon as practicable—

(A) make available to all stakeholders of the qualifying project information regarding—

(i) the environmental and socioeconomic resources located within the area of the qualifying project; and

(ii) the general locations of the alternatives under consideration; and

(B) identify any issues of concern regarding the potential environmental or socioeconomic effects of the qualifying project, including any issues that could substantially delay or prevent an agency from granting a permit or other approval that is needed for a study relating to the qualifying project.

(f) Concurrent Review Actions.—

(1) IN GENERAL.—Any review, analysis, permit, license, approval, or decision regarding a qualifying project made by a Federal, State, or local government agency shall be—

(A) conducted, to the maximum extent practicable, concurrently with any other applicable government agency; and

(B) incorporated in the schedule for the qualifying project under subsection (d)(2).

(2) REQUIREMENT.—The lead and cooperating agencies for a qualifying project shall formulate and implement administrative, policy, and procedural mechanisms to enable adherence to the schedule for the qualifying project in a timely, coordinated, and environmentally responsible manner.

(3) GUIDANCE.—The Secretary shall issue guidance regarding the use of programmatic approaches to carry out the environmental review process that, to the maximum extent practicable—

(A) eliminates repetitive discussions of the same issues;

(B) focuses on the actual issues ripe for analysis at each level of review;

(C) establishes a formal process for coordinating with participating and cooperating agencies, including the establishment of a list of all data required to carry out an environmental review process; and

(D) complies with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and all other applicable laws and regulations.

(g) Administrative Record and Data Management.—

(1) IN GENERAL.—The lead agency shall—

(A) be responsible for compiling the administrative record of the information used as the basis for decisions relating to a qualifying project; and

(B) to the maximum extent practicable and consistent with Federal law, make available all data regarding the qualifying project in a format that is accessible via electronic means for project stakeholders, cooperating agencies, and the public.

(2) REPORTS.—Not less frequently than once each year, the lead agency shall submit a progress report regarding a qualifying project to project stakeholders, cooperating agencies, the Committee on Environment and Public Works of the Senate, and the Committee on Natural Resources of the House of Representatives.

(h) Participation by Non-Federal Project Sponsors.—

(1) APPLICATION TO SERVE AS COOPERATING AGENCY.—A non-Federal sponsor of a qualifying project may submit to the lead Secretary an application to serve as a cooperating agency of the qualifying project for purposes of preparing any necessary documents relating to the qualifying project, including an environmental review, if—

(A) the non-Federal sponsor is a public agency as defined under the laws of the State in which the non-Federal sponsor is located;

(B) the non-Federal sponsor agrees to adhere to—

(i) all required Federal laws (including regulations) in carrying out the qualifying project; and

(ii) all decisions regarding the qualifying project that have been agreed on by other stakeholders of the qualifying project; and

(C) the applicable lead agency certifies that participation by the non-Federal sponsor will not inappropriately bias the qualifying project in favor of the non-Federal sponsor.

(2) FUNDS.—Any funds contributed by a non-Federal sponsor to a qualifying project—

(A) may be accepted to maintain or accelerate progress on the qualifying project, subject to the condition that the Secretary shall—

(i) review the use of the funds; and

(ii) certify in writing that the funds—

(I) are used solely to complete applicable environmental reviews; and

(II) do not unduly influence any permit or approval decision regarding the qualifying project; and

(B) shall be applied toward the non-Federal cost-share of the qualifying project.

(i) Applicability to Calfed Storage Studies.—For any feasibility study referred to in section 401(3), this section shall apply to all activities to be carried out under the study on or after the date of enactment of this Act that would lead to congressional authorization of an applicable project for construction.

## SEC. 405. DAM SAFETY PROJECTS WITH INCREASED STORAGE COMPONENT.

(a) Additional Project Benefits.—The Reclamation Safety of Dams Act of 1978 is amended—

(1) in section 3 (43 U.S.C. 507), by striking “Construction” and inserting “Except as provided in section 5B, construction”; and

(2) by inserting after section 5A (43 U.S.C. 509a) the following:

### “SEC. 5B. ADDITIONAL PROJECT BENEFITS.

“(a) In General.—Notwithstanding section 3, if the Secretary, in the judgment of the Secretary, makes a determination described in subsection (b), the Secretary may develop any additional project benefit—

1 “(1) through the construction of new or supplementary works on a project in conjunction  
2 with the activities carried out by the Secretary pursuant to section 2; and

3 “(2) subject to the conditions described in the feasibility study relating to the project.

4 “(b) Description of Determination.—A determination referred to in subsection (a) is a  
5 determination by the Secretary that—

6 “(1) an additional project benefit, including additional conservation storage capacity, is—

7 “(A) necessary; and

8 “(B) in the interests of the United States; and

9 “(2) the project benefit proposed to be carried out is—

10 “(A) feasible; and

11 “(B) not inconsistent with the purposes of this Act.

12 “(c) Requirements.—The costs associated with developing an additional project benefit under  
13 this section shall be—

14 “(1) allocated among each entity that receives a benefit from the additional conservation  
15 storage capacity, subject to an agreement between the State and Federal funding agencies  
16 regarding those allocations; and

17 “(2) repaid in accordance with all applicable provisions of Federal reclamation law (the  
18 Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and  
19 amendatory of that Act (43 U.S.C. 371 et seq.).”.

20 (b) San Luis Reservoir Expansion.—Section 103(f)(1)(A) of the Calfed Bay-Delta  
21 Authorization Act (Public Law 108–361; 118 Stat. 1694) is amended—

22 (1) by striking “Funds” and inserting the following:

23 “(i) IN GENERAL.—Funds”; and

24 (2) by adding at the end the following:

25 “(ii) ENVIRONMENTAL REVIEWS AND FEASIBILITY STUDY.—The Commissioner  
26 of Reclamation shall submit to Congress—

27 “(I) an expansion draft environmental impact statement and feasibility  
28 study relating to the San Luis Reservoir by not later than April 1, 2016; and

29 “(II) a final environmental impact statement relating to the San Luis  
30 Reservoir by not later than December 31, 2016.”.

## 31 SEC. 406. UPDATING WATER OPERATIONS MANUALS 32 FOR NON-FEDERAL PROJECTS.

33 (a) Definitions.—In this section:

34 (1) NON-FEDERAL PROJECT.—

35 (A) IN GENERAL.—The term “non-Federal project” means a non-Federal reservoir  
36 project operated for flood control in accordance with rules prescribed by the Secretary

pursuant to section 7 of the Act of December 22, 1944 (commonly known as the “Flood Control Act of 1944”) (58 Stat. 890, chapter 665).

(B) EXCLUSION.—The term “non-Federal project” does not include any dam or reservoir owned by—

(i) the Bureau of Reclamation; or

(ii) the Corps of Engineers.

(2) OWNER.—The term “owner” with respect to a non-Federal project, does not include—

(A) the Secretary;

(B) the Secretary of the Interior; or

(C) the head of any other Federal department or agency, notwithstanding any Federal monetary contribution made toward the construction cost of the relevant non-Federal project, if the contribution is predicated a on flood control or other specific benefit.

(3) SECRETARY.—The term “Secretary” means the Secretary of the Army.

(b) Review by Secretary.—

(1) IN GENERAL.—Not later than 1 year after the date of receipt of a request from the owner of a non-Federal project, the Secretary, in consultation with the owner, shall review the water control manual and flood control rule curves and any operational or structural modifications proposed by the owner, including the use of improved weather forecasting and run-off forecasting methods, to enhance the existing purposes of the non-Federal project.

(2) REPORT.—Not later than 90 days after the date of completion of a review under paragraph (1), the Secretary shall submit to the owner of the applicable non-Federal project a report describing the results of the review.

(3) PRIORITY.—In carrying out of this subsection, the Secretary shall give priority to review and revision of water control manuals and flood control rule curves for any non-Federal project—

(A) that is located in a State in which a drought emergency has been declared during the 1-year period ending on the date of review by the Secretary;

(B) the owner of which has submitted to the Secretary a formal request to review or revise the operations manual or rule curves to accommodate new watershed data or proposed project modifications or operational changes;

(C) the water control manual and hydrometeorological information establishing the flood control rule curves of which have not been revised during the 20-year period ending on the date of review by the Secretary;

(D) with respect to which a completed probable maximum flood analysis or other data indicates that revisions of the project control manual or rule curves are likely to enhance water supply benefits and flood control operations; and

(E) modifications or operational changes proposed by the owner of which are likely



to enhance water supply benefits and flood control operations.

(4) NON-FEDERAL CONTRIBUTIONS.—The Secretary may accept non-Federal funds for all or a portion of the cost of carrying out a review or revision of water control manuals and rule curves for non-Federal projects under this subsection.

## SEC. 407. CENTRAL VALLEY PROJECT.

(a) Cooperative Agreements.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, to determine the feasibility of an agreement for long-term use of an existing or expanded non-Federal storage or conveyance facility to augment Federal water supply, ecosystem, and operational flexibility benefits, the Secretary shall offer to enter into cooperative agreements with non-Federal entities to provide replacement water supplies for drought relief for—

(A) contractors of the Central Valley Project (as defined in section 3403 of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706));

(B) units of the National Wildlife Refuge System;

(C) State wildlife areas; and

(D) private wetland areas.

(2) REQUIREMENTS.—A cooperative agreement under this subsection shall—

(A) include the purchase of storage capacity in non-Federal facilities from willing sellers; and

(B) provide reimbursement for the temporary use of available capacity in existing above-ground, off-stream storage and associated conveyance facilities owned by local water agencies.

(b) Report.—Not later than 2 years after the date of enactment of this Act, the Secretary shall submit to the Chief of the National Wildlife Refuge System and contractors of the Central Valley Project a report describing the feasibility of the agreement for long-term use described in subsection (a)(1).

## TITLE V—WATER RIGHTS PROTECTIONS

### SEC. 501. PROTECTIONS FOR STATE WATER PROJECT CONTRACTORS.

(a) In General.—If, as a result of the application of this Act, the California Department of Fish and Wildlife makes an election described in subsection (b), the water supply benefits resulting from the election that accrue to the Central Valley Project, if any, shall be shared equally with the State Water Project.

(b) Description of Elections.—An election referred to in subsection (a) is an election—

(1) to revoke the consistency determination pursuant to section 2080.1 of the California Fish and Game Code;

(2) to amend or issue a new consistency determination pursuant to that section of the

California Fish and Game Code in a manner that results in reduced water supply to the State Water Project, as compared to the water supply available under the smelt biological opinion and the salmonid biological opinion; or

(3) to require an authorization for taking under section 2081 of the California Fish and Game Code for the operation of the State Water Project in a manner that results in reduced water supply to the State Water Project, as compared to the water supply available under the smelt biological opinion and the salmonid biological opinion.

## SEC. 502. AREA OF ORIGIN PROTECTIONS.

(a) Requirement.—With respect to the operation of the Central Valley Project (as defined in section 302), the Secretary of the Interior shall adhere to the water rights laws of the State governing water rights priorities by honoring water rights senior to those held by the United States for operation of the Central Valley Project, regardless of the source of priority, including—

(1) any appropriative water right initiated prior to December 19, 1914; and

(2) any water right or other priority perfected, or expected to be perfected, pursuant to part 2 of division 2, article 1.7 (beginning with section 1215 of chapter 1 of part 2 of division 2, sections 10505, 10505.5, 11128, 11460, 11461, 11462, and 11463, and sections 12200 to 12220) of the California Water Code.

(b) Actions Under ESA.—Any action carried out by the Secretary of the Interior or the Secretary of Commerce pursuant to section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) that requires a diversion to be bypassed, or that involves the release of water from any Central Valley Project water storage facility, shall be carried out in accordance with the water rights priorities established by law in the State.

## SEC. 503. NO REDIRECTED ADVERSE IMPACTS.

The Secretary of the Interior shall ensure that, except as otherwise provided for in a water service or repayment contract, an action carried out in compliance with a legal obligation imposed pursuant to, or as a result of, this Act, including such an action under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) or any other Federal law (including regulations), shall not cause a redirected adverse water supply or an adverse fiscal impact to any individual or entity within the boundaries of the Sacramento River watershed or the State Water Project.

## SEC. 504. EFFECT ON STATE LAWS.

Nothing in this Act preempts any State law in effect on the date of enactment of this Act, including area of origin and other water rights protections.

## TITLE VI—MISCELLANEOUS

## SEC. 601. AUTHORIZED SERVICE AREA.

(a) In General.—The authorized service area of the Central Valley Project authorized under the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706) shall include the area within the boundaries of the Kettleman City Community Services District, California, as



in existence on the date of enactment of this Act.

(b) Long-term Contract.—

(1) IN GENERAL.—Notwithstanding the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706) and subject to paragraph (2), the Secretary of the Interior, in accordance with the reclamation laws, shall enter into a long-term contract with the Kettleman City Community Services District, California, under terms and conditions mutually agreeable to the parties, for the delivery of up to 900 acre-feet of Central Valley Project water for municipal and industrial use.

(2) LIMITATION.—Central Valley Project water deliveries authorized under the contract entered into under paragraph (1) shall be limited to the minimal quantity necessary to meet the immediate needs of the Kettleman City Community Services District, California, in the event that local supplies or State Water Project allocations are insufficient to meet those needs.

(c) Permit.—The Secretary shall apply for a permit with the State for a joint place of use for water deliveries authorized under the contract entered into under subsection (b) with respect to the expanded service area under subsection (a), consistent with State law.

(d) Additional Costs.—If any additional infrastructure, water treatment, or related costs are needed to implement this section, those costs shall be the responsibility of the non-Federal entity.

## SEC. 602. RESCHEDULED WATER.

(a) In General.—In connection with operations of the Central Valley Project, California, if the San Luis Reservoir does not fill by the last day of February of any year, the Secretary of the Interior shall permit any entity with an agricultural water service or repayment contract for the delivery of water from the Delta Division or the San Luis Unit to reschedule into the immediately following contract year (March 1 through the last day of February) any unused Central Valley Project water previously allocated for irrigation purposes.

(b) Apportionment.—If water remaining in Federal storage in San Luis Reservoir on the last day of February of any year is insufficient to meet all rescheduling requests under subsection (a), the Secretary of the Interior shall, based on contract quantity, apportion among all contractors that request to reschedule water all water remaining in San Luis Reservoir on the last day of February of the applicable year.

(c) Availability of Additional Water.—The Secretary shall make all reasonable efforts to make available additional rescheduled water, if the efforts do not interfere with the Central Valley Project operations in the contract year for which Central Valley Project water has been rescheduled.

## SEC. 603. FISHERIES DISASTER DECLARATION.

[TO BE SUPPLIED.]

## SEC. 604. RESTORATION FUND ADVISORY BOARD.

Section 3407 of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4726) is amended by adding at the end the following:

1 “(g) Report on Expenditure of Funds.—

2 “(1) IN GENERAL.—For each fiscal year, the Secretary, in consultation with the Advisory  
3 Board, shall submit to Congress a plan for the expenditure of all of the funds deposited into  
4 the Restoration Fund during the preceding fiscal year.

5 “(2) CONTENTS.—The plan shall include an analysis of the cost-effectiveness of each  
6 expenditure.

7 “(h) Advisory Board.—

8 “(1) ESTABLISHMENT.—There is established the Restoration Fund Advisory Board  
9 (referred to in this subsection as the ‘Advisory Board’), which shall be composed of 14  
10 members appointed by the Secretary.

11 “(2) MEMBERSHIP.—

12 “(A) IN GENERAL.—The Secretary shall appoint to the Advisory Board members  
13 who represent the various Central Valley Project stakeholders, of whom—

14 “(i) 3 members shall be agricultural users of the Central Valley Project;

15 “(ii) 2 members shall be municipal and industrial users of the Central Valley  
16 Project;

17 “(iii) 3 members shall be power contractors of the Central Valley Project;

18 “(iv) 1 member shall be a representative of a Federal wildlife refuge that has  
19 entered into a contract with the Bureau of Reclamation for Central Valley Project  
20 water supplies;

21 “(v) 1 member shall represent a nongovernmental organization involved in the  
22 protection and restoration of California fisheries;

23 “(vi) 1 member shall represent the commercial fishing industry;

24 “(vii) 1 member shall represent the recreational fishing industry; and

25 “(viii) 2 members shall be appointed at the discretion of the Secretary.

26 “(B) OBSERVER.—The Secretary and the Secretary of Commerce may each  
27 designate a representative to act as an observer of the Advisory Board.

28 “(C) CHAIRPERSON.—The Secretary shall appoint 1 of the members described in  
29 subparagraph (A) to serve as chairperson of the Advisory Board.

30 “(3) TERMS.—The term of each member of the Advisory Board shall be 4 years.

31 “(4) DATE OF APPOINTMENTS.—The appointment of a member of the Advisory Board  
32 shall be made not later than—

33 “(A) the date that is 120 days after the date of enactment of this subsection; or

34 “(B) in the case of a vacancy on the Advisory Board described in paragraph (5), the  
35 date that is 120 days after the date on which the vacancy occurs.

36 “(5) VACANCIES.—

37 “(A) IN GENERAL.—A vacancy on the Advisory Board shall be—

1 “(i) filled in the manner in which the original appointment was made; and

2 “(ii) subject to any conditions that applied with respect to the original  
3 appointment.

4 “(B) FILLING UNEXPIRED TERM.—An individual selected to fill a vacancy on the  
5 Advisory Board shall be appointed for the unexpired term of the member replaced.

6 “(C) EXPIRATION OF TERMS.—The term of a member shall not expire before the date  
7 on which the successor of the member takes office.

8 “(6) REMOVAL.—A member of the Advisory Board may be removed from office by the  
9 Secretary.

10 “(7) NONAPPLICABILITY OF FACa.—The Advisory Board shall not be subject to the  
11 requirements of the Federal Advisory Committee Act (5 U.S.C. App.).

12 “(8) DUTIES.—The Advisory Board shall—

13 “(A) meet not less frequently than semiannually to develop and provide to the  
14 Secretary recommendations regarding priorities and spending levels on projects and  
15 programs carried out under this title;

16 “(B) ensure that any advice or recommendations provided by the Advisory Board  
17 reflect the independent judgment of the Advisory Board;

18 “(C) not later than December 31, 2015, and annually thereafter, submit to the  
19 Secretary and Congress the recommendations under subparagraph (A); and

20 “(D) not later than December 31, 2015, and biennially thereafter, submit to Congress  
21 a report that describes the progress made in achieving the actions described in section  
22 3406.

23 “(9) ADMINISTRATION.—With the consent of the appropriate department or agency head,  
24 the Advisory Board may use the facilities and services of any Federal department or agency.

25 “(10) COOPERATION AND ASSISTANCE.—

26 “(A) IN GENERAL.—On receipt of a request from the chairperson of the Advisory  
27 Board for information or assistance to facilitate carrying out this section, the Secretary  
28 shall promptly provide such information or assistance, unless otherwise prohibited by  
29 law.

30 “(B) OFFICE SPACE AND ASSISTANCE.—The Secretary shall provide to the Advisory  
31 Board—

32 “(i) appropriate and adequate office space, together with such equipment, office  
33 supplies, and communications facilities and services as may be necessary for the  
34 operation of the Advisory Board; and

35 “(ii) necessary maintenance services for such offices, equipment, and  
36 facilities.”.

## 37 SEC. 605. WATER OPERATIONS REVIEW PANEL.

38 (a) Establishment.—There is established a panel, to be known as the “Water Operations

Review Panel” (referred to in this section as the “Panel”).

(b) Membership.—

(1) COMPOSITION.—The Panel shall be composed of 5 members, to be appointed by the Secretary of the Interior, in consultation with the Secretary of Commerce, of whom—

(A) 1 member shall be a former State-elected official, who shall be the Chairperson of the Panel (referred to in this section as the “Chairperson”);

(B) 2 members shall be fisheries biologists, of whom—

(i) 1 shall have expertise in Delta smelt; and

(ii) 1 shall have expertise in salmonids; and

(C) 2 members shall be engineers with substantial expertise in water operations.

(2) RECOMMENDATIONS.—The Secretary of the Interior shall take into consideration the recommendations—

(A) of the Governor of the State, for purposes of appointing a member under paragraph (1)(A); and

(B) of the Director of the California Department of Water Resources, for purposes of appointing members under paragraph (1)(C).

(3) PROHIBITION ON FEDERAL GOVERNMENT EMPLOYMENT.—For a period of at least 3 years prior to appointment to the Panel, a member appointed to the Panel under paragraph (1) shall not have been an employee of the Federal Government.

(4) DATE OF APPOINTMENTS.—The appointment of a member of the Panel shall be made not later than—

(A) the date that is 120 days after the date of enactment of this Act; or

(B) in the case of a vacancy on the Panel described in subsection (c)(2), the date that is 120 days after the date on which the vacancy occurs.

(c) Term; Vacancies.—

(1) TERMS.—A member of the Panel shall be appointed for a term of 3 years, except that, with respect to the members initially appointed to the Panel under this section—

(A) the Chairperson shall be appointed for a term of 3 years;

(B) of the members appointed under subsection (b)(1)(B)—

(i) 1 member shall be appointed for a term of 1 year; and

(ii) 1 member shall be appointed for a term of 2 years; and

(C) of the members appointed under subsection (b)(1)(C)—

(i) 1 member shall be appointed for a term of 1 year; and

(ii) 1 member shall be appointed for a term of 2 years.

(2) VACANCIES.—

(A) IN GENERAL.—A vacancy on the Panel shall be—

- 1 (i) filled in the manner in which the original appointment was made; and  
2 (ii) subject to any conditions that applied with respect to the original  
3 appointment.

4 (B) TERM.—An individual appointed to fill a vacancy on the Panel shall be  
5 appointed for the unexpired term of the member being replaced.

6 (3) EXPIRATION OF TERMS.—The term of any member shall not expire before the date on  
7 which the successor of the member takes office.

8 (d) Removal.—A member of the Panel may be removed from office by the Secretary of the  
9 Interior.

10 (e) Nonapplicability of FACA.—The Panel shall not be subject to the requirements of the  
11 Federal Advisory Committee Act (5 U.S.C. App.).

12 (f) Duties.—

13 (1) ASSESSMENT AND REPORT ON OPERATIONAL DECISIONS.—

14 (A) IN GENERAL.—Not later than November 30, 2015, and not later than November  
15 30 of each year thereafter, the Panel shall submit to the Committees and  
16 Subcommittees described in subparagraph (B) a report that includes—

- 17 (i) an assessment of the operational decisions under this Act; and  
18 (ii) recommendations for the prospective implementation of this Act.

19 (B) COMMITTEES AND SUBCOMMITTEES.—The Committees and Subcommittees  
20 referred to in subparagraph (A) are—

- 21 (i) the Committee on Environment and Public Works of the Senate;  
22 (ii) the Subcommittee on Energy and Water Development of the Committee on  
23 Appropriations of the Senate;  
24 (iii) the Committee on Natural Resources of the House of Representatives; and  
25 (iv) the Subcommittee on Energy and Water Development of the Committee on  
26 Appropriations of the House of Representatives.

27 (C) REQUIREMENTS FOR ASSESSMENT.—In making the assessment under  
28 subparagraph (A)(i), the Panel shall review and evaluate—

- 29 (i) the decisions of the Director, the Assistant Administrator, and the  
30 Commissioner in implementing this Act and other Federal laws applicable to the  
31 operations of the Central Valley Project and the State Water Project;  
32 (ii) the compliance of the Director, the Assistant Administrator, and the  
33 Commissioner with the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.)  
34 with respect to operations of the Central Valley Project and the State Water  
35 Project; and  
36 (iii) the efforts of the Director, the Assistant Administrator, and the  
37 Commissioner to minimize water supply disruptions while complying with the  
38 Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and this Act.

(D) REQUIREMENTS FOR RECOMMENDATIONS.—The Panel shall make recommendations under subparagraph (A)(ii) for prospective actions and potential actions for further study to better achieve the purposes of this Act or the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) as applied to the operations of the Central Valley Project and the State Water Project, including proposals—

(i) that in combination, increase—

(I) the survival of listed species; and

(II) water supplies for the Central Valley Project and the State Water Project;

(ii) to increase the survival of listed fish species with the minimum practicable adverse effects on water supplies for the Central Valley Project and the State Water Project that would result from taking the specific proposed action recommended;

(iii) to increase the water supplies described in clause (ii) with the minimum practicable adverse effects on the survival of listed fish species; and

(iv) that respond to the annual reports of the Delta Science Program Independent Review Panel regarding long-term operations opinions.

(2) 5-YEAR ASSESSMENT.—

(A) IN GENERAL.—Not later than 5 years after the date of enactment of this Act, and every 5 years thereafter, the Panel shall publish a report that—

(i) evaluates the effectiveness of this Act; and

(ii) makes legislative recommendations regarding—

(I) any provision of this Act that should be amended or repealed due to ineffectiveness or any other reason; and

(II) alternative legislation or modifications to this Act that could provide additional water supplies for the Central Valley Project and the State Water Project without reducing the survival of listed fish species.

(B) GOAL.—To the maximum extent practicable, the Panel shall submit legislative recommendations that, in the aggregate, would—

(i) improve water supplies for the Central Valley Project and the State Water Project; and

(ii) increase the survival of listed fish species.

(C) SUBMISSION TO CONGRESS.—The Panel shall submit to the Committees and Subcommittees of Congress described in paragraph (1)(B) the legislative recommendations of the Panel.

(3) SUBMISSION OF COMMENTS AND PROPOSALS TO PANEL.—

(A) IN GENERAL.—In preparing the reports under paragraphs (1) and (2), the Panel shall solicit comments and proposals from any interested individuals and entities, in accordance with subparagraph (B).

(B) SCHEDULE.—The Panel shall publish—

(i) a schedule for the receipt of comments and proposals under subparagraph (A); and

(ii) instructions regarding how to submit to the Panel those comments and proposals.

(g) Cooperation and Assistance.—

(1) IN GENERAL.—On request of the Chairperson for information or assistance to facilitate carrying out this section, the Secretary of the Interior and the Secretary of Commerce shall promptly provide such information or assistance to the Panel, unless otherwise prohibited by law.

(2) PROVISION OF OFFICE SPACE; EQUIPMENT.—The Secretary of the Interior shall provide to the Panel—

(A) appropriate and adequate office space;

(B) such equipment, office supplies, and communications facilities and services as may be necessary for the operation of the Panel; and

(C) any necessary maintenance services for the offices, equipment, and facilities provided under subparagraphs (A) and (B).

## SEC. 606. CONTINGENCY IN EVENT OF CONTINUING RESOLUTION FOR FISCAL YEAR 2015.

Any deadline applicable to a Federal department or agency, as described in sections 103(b), 103(d), 202, 204, and 205, shall be extended by the number of days that any resolution providing continuing appropriations for the United States Fish and Wildlife Service or the National Marine Fisheries Service for fiscal year 2015 is in effect after January 1, 2015, if—

(1) such a continuing resolution is enacted;

(2) the continuing resolution does not include funding for the actions of the applicable department or agency required by this Act (or an amendment made by this Act); and

(3) a funding shortfall remains for the actions of the applicable department or agency after consultation by the head of the department or agency with the California Department of Water Resources, Central Valley Project and State Water Project contractors, and the Interagency Ecological Program.



Title: To provide drought relief in the State of California, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

## SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the “California Drought Relief Act of 2014”.

(b) Table of Contents.—The table of contents of this Act is as follows:

Sec.1.Short title; table of contents.

Sec.2.Findings.

Sec.3.Definitions.

## TITLE I—ADJUSTING DELTA SMELT MANAGEMENT BASED ON INCREASED REAL-TIME MONITORING AND UPDATED SCIENCE

~~Sec.101.Definitions~~ **Sec.101.Definition of Secretary.**

Sec.102.Revision of incidental take level calculation **for Delta smelt** to reflect new science.

Sec.103.Factoring increased real-time monitoring and updated science into Delta smelt management.

## TITLE II—ENSURING SALMONID MANAGEMENT IS RESPONSIVE TO NEW SCIENCE

~~Sec.201.Definitions~~ **Sec.201.Definition of Secretary.**

Sec.202.Required scientific studies.

Sec.203.Process for ensuring salmonid management is responsive to new science.

Sec.204.Pilot program to protect ~~certain~~ **native anadromous** fish in Stanislaus River.

Sec.205.CalFed invasive species pilot projects in the Sacramento-San Joaquin Bay Delta and **its** tributaries.

Sec.206.Mark fishery and harvest management.

Sec.207.New actions to benefit Central Valley salmonids.

## TITLE III—OPERATIONAL FLEXIBILITY AND DROUGHT RELIEF

Sec.301.Findings.

Sec.302.Definitions.



- 1 Sec.303.Operational flexibility in times of drought.
- 2 Sec.304.Operation of cross-channel gates.
- 3 Sec.305.Flexibility for export/inflow ratio.
- 4 Sec.306.Emergency environmental reviews.
- 5 Sec.307.Prioritizing State revolving funds during droughts.
- 6 Sec.308.Increased flexibility for regular project operations.
- 7 Sec.309.Temporary operational flexibility for first few storms of ~~2014~~2015 **2015** water year.
- 8 Sec.310.Expediting water transfers.
- 9 Sec.311.Warren Act contracts.
- 10 Sec.312.Additional Warren Act contracts.

## 11 TITLE IV—INCREASING WATER STORAGE

- 12 Sec.401.Findings.
- 13 Sec.402.Calfed storage feasibility studies.
- 14 Sec.403.Water storage project construction.
- 15 Sec.404.Other storage feasibility studies.
- 16 Sec.405.Dam safety projects with increased storage component.
- 17 Sec.406.Updating water operations manuals for non-Federal projects.
- 18 Sec.407.Central Valley Project.

## 19 TITLE V—WATER RIGHTS PROTECTIONS

- 20 Sec.501.Protections for State ~~water project~~ **Water Project** contractors.
- 21 Sec.502.Area of origin protections.
- 22 Sec.503.No redirected adverse impacts.
- 23 ~~Sec.504.Sacramento River settlement contracts.~~
- 24 ~~Sec.505.Effect~~ **Sec.504.Effect** on State laws.

## 25 TITLE VI—MISCELLANEOUS

- 26 Sec.601.Authorized service area.
- 27 Sec.602.Rescheduled water.
- 28 Sec.603.Fisheries disaster declaration.
- 29 ~~Sec.604.Oversight board for Restoration Fund.~~ **Sec.604.Restoration Fund Advisory Board.**
- 30 ~~Sec.605.Judicial/administrative review.~~
- 31 ~~Sec.606.Water~~ **Sec.605.Water** Operations Review Panel.

~~Sec.607.Contingency~~ **Sec.606.Contingency** in event of continuing resolution for fiscal year 2015.

## **SEC. 2. FINDINGS.**

Congress finds the following:

**\*\* 1** (1) As established in the Proclamation of a State of Emergency issued by the Governor of the State on January 17, 2014, the State is experiencing record dry conditions.

**\*\* 2** (2) Extremely dry conditions have persisted in the State since 2012, and the drought conditions are likely to persist into the future.

**(3) As of September 2014, the forecast of the National Weather Service does not show a high likelihood of the State experiencing significant precipitation for the remainder of the year.**

**(4) The water supplies of the State are at record-low levels, as indicated by the fact that all major**~~(1) The 2008 smelt biological opinion and 2009 salmonid biological opinion contain reasonable and prudent alternatives to protect endangered fish species from being harmed by operation of the Central Valley Project and State Water Project. reservoir levels were at 20 to 35 percent of capacity as of September 25, 2014.~~

**(5) The lack of precipitation has been a significant contributing factor to the 6,091 fires experienced in the State as of September 15, 2014, and which covered nearly 400,000 acres.**

**(6)(A) According to a study released by the University of California, Davis in July 2014, the drought has led to—**

**(i) the fallowing of 428,000 acres of farmland;**

**(ii) the loss of \$810,000,000 in crop revenue;**

**(iii) the loss of \$203,000,000 in dairy and other livestock value; and**

**(iv) the increase of groundwater pumping costs by \$454,000,000.**

**(B) The statewide economic costs are estimated to be \$2,200,000,000, with over 17,000 seasonal and part-time agricultural jobs lost.**

**(7) Level II water deliveries under the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706) and amendments made by that Act to refuges have also declined by 25 percent in the north of the Delta region, and by 35 percent in the south of the Delta region.**

**(8) Only 1/6 of the usual acres of rice fields are being flooded, which leads to a significant decline in habitat for migratory birds and an increased risk of disease at the remaining wetland due to overcrowding of the birds.**

**\*\* 3** ~~(4)~~**(9)** The drought of 2013 through 2014 constitutes a serious emergency that poses immediate and severe risks to human life and safety and to the environment throughout the State.

**(10) The serious emergency described in paragraph (4) requires—**

1           \*\* 4 (A) immediate and credible action that respects the complexity of the water  
2           system of the State and the importance of the water system to the entire State; and

3           \*\* 5 (B) policies that do not pit stakeholders against one another, which history  
4           shows only leads to costly litigation that benefits no one and prevents any real  
5           solutions.

6           \*\* 6 ~~(6)~~(11) Federal law (including regulations) directly authorizes expedited  
7           decisionmaking procedures and environmental and public review procedures to enable  
8           timely and appropriate implementation of actions to respond to the type and severity of the  
9           serious emergency described in paragraph (4).

10          \*\* 7 ~~(7)~~(12) The serious emergency described in paragraph (4) fully satisfies the  
11          conditions necessary for the exercise of emergency decisionmaking, analytical, and public  
12          review requirements under—

13                (A) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

14                (B) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

15          \*\* 8 (C) water control management procedures of the Corps of Engineers described  
16          in section 222.5 of title 33, Code of Federal Regulations (including successor  
17          regulations); and

18          \*\* 9 (D) the Reclamation States Emergency Drought Relief Act of 1991 (Public  
19          Law 102–250; 106 Stat. 53).

20          **(13) The smelt biological opinion and salmonid biological opinion contain**  
21          **reasonable and prudent alternatives to protect listed fish species from being**  
22          **jeopardized by operation of the Central Valley Project and State Water Project and to**  
23          **prevent adverse modification of designated critical habitat.**

24          **(14) The effect of those**~~(2) The~~ reasonable and prudent alternatives in the biological  
25          opinions **may** restrict the quantity of water pumping that can occur to deliver water for  
26          agricultural, municipal, industrial, groundwater, and refuge uses ~~within the Central Valley~~  
27          ~~of California.~~ **in the State.**

28          ~~(3)~~**(15)** Data on the difference between water demand and reliable water supplies for  
29          various regions south of the Delta, including the San Joaquin Valley, indicate there is a  
30          significant annual gap between reliable water supplies to meet agricultural, municipal,  
31          industrial, groundwater, and refuge water needs within the South of Delta and Friant  
32          Division of the Central Valley Project and the State Water Project south of the  
33          Sacramento-San Joaquin River Delta and north of the Tehachapi mountain range and the  
34          demands of those areas.

35          ~~(4)~~**(16)** The gap described in paragraph ~~(3)~~**(15)** varies depending on the methodology of  
36          the analysis performed, but can ~~include representation~~ **be represented** in the following  
37          ways:

38                (A) For Central Valley Project **South of Delta** water service contractors ~~south of the~~  
39          **Delta**, if it is assumed that a water supply deficit is the difference between the quantity  
40          of water available for allocation and the maximum contract quantity of water,  
41          particularly in years closer to the date of enactment of this Act, the water supply

deficits that have developed from 1992 to 2014 as a result of changes aside from natural variations in hydrology during this timeframe range between 720,000 and 1,100,000 acre-feet.

(B) For Central Valley Project and State Water Project water service contractors south of the Delta and north of the Tehachapi mountain range, if it is assumed that a water supply deficit is the difference between reliable water supplies, including maximum water contract deliveries, safe yield of groundwater, safe yield of local and surface supplies and long-term contracted water transfers, and water demands, including water demands from agriculture, municipal and industrial uses, and refuge contractors, the water supply deficit ranges between approximately 2,500,000 to 2,700,000 acre-feet.

~~[(C) client note: State's analysis (pending information from DWR, ETA early week of 8/25).]~~ **(C)(i) The California Water Plan evaluated outcomes under current conditions under 198 combinations of climate and growth scenarios, projecting a range of urban and agricultural reliability into the future.**

**(5)(ii) Reliability under this subparagraph is defined as the percentage of years in which demand is sufficiently met by supply.**

**(iii) Reliability across a range of futures within the San Joaquin Valley can be presented as—**

**(I) for the San Joaquin River Hydrologic Region, as defined in the California Water Plan—**

**(aa) urban supply reliability ranges between 90 and 100 percent, with a mean reliability across futures in the high 90th percentile; and**

**(bb) agricultural supply reliability ranges between 70 and 100 percent, with a mean reliability across futures in the mid-90th percentile; and**

**(II) for the Tulare Lake Hydrologic Region, as defined in the California Water Plan—**

**(aa) urban supply reliability ranges between 70 and 100 percent, with a mean reliability across futures in the mid-90th percentile; and**

**(bb) agricultural supply reliability ranges between 20 and 100 percent, with a mean reliability across futures in the low 70th percentile.**

**(17) Since the issuance of the biological opinions, considerable uncertainty remains recent studies have raised questions about the benefits to endangered fish salmonid populations from water pumping restrictions, including hydrodynamic data, acoustic telemetry studies, and other studies carried out close to the date of enactment of this Act that have found that through Delta survival rates of salmonid species do not correlate directly and clearly with certain water pumping restrictions, in particular limitations to Old and Middle River flows to levels less negative than 5000 cubic feet per second. the following:**

**(6)(A)(i) Expert panel reviews have concluded that instantaneous water**

1 velocities in the tidal Delta affect juvenile salmonids, not tidally average flows, as  
2 previously assumed.

3 (ii) Based on instantaneous water velocity modeling, water exports have a much  
4 smaller area of effect than was previously believed.

5 (B) Tagging studies conducted since 1993 (representing more than 28,000,000  
6 fish) demonstrate that the proportion of Sacramento Basin origin Chinook  
7 salmon entrained into the pumping facilities (including prescreen losses) are on  
8 average less than  $\frac{1}{10}$  1 percent.

9 (C) Telemetric studies of Sacramento Basin and San Joaquin Basin origin  
10 juvenile Chinook salmon have not demonstrated any significant adverse effect  
11 from water exports on fish survival.

12 (18) Data of pumping activities at the Central Valley Project and State Water Project  
13 Delta pumps identify that, on average from 2008 to ~~Water Year 2009 to Water Year~~  
14 2014, pumping activity takes 893 Delta smelt annually with an authorized take level of  
15 5,003 Delta smelt annually, according to the biological opinion issued December 15, 2008.

16 ~~(7)~~(19) It is worth exploring whether there is a way to implement the biological opinions  
17 that would preserve the protections afforded endangered fish and simultaneously increase  
18 water deliveries to the Central Valley Project and State Water Project without weakening  
19 environmental laws or protections.

20 ~~(8)~~(20) In 2014, better information exists than was known in 2008 concerning—

21 (A) conditions and operations that may or may not lead to high salvage events that  
22 jeopardize the fish populations; and

23 (B) what alternative management actions can be taken to avoid jeopardy.

24 ~~(9)~~(21) Alternative management strategies, such as trapping and barging juvenile salmon  
25 through the Delta, removing nonnative species, enhancing habitat, and monitoring fish  
26 movement and location in real-time, can contribute significantly to protecting and  
27 recovering these endangered fish species, and at potentially lower costs to water supplies.

28 (22) Resolution of fundamental policy questions concerning the extent to which  
29 application of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) affects the  
30 operation of the Central Valley Project and State Water Project is the responsibility of  
31 Congress.

## 32 SEC. 3. DEFINITIONS.

33 In this Act:

34 (1) ASSISTANT ADMINISTRATOR.—The term “Assistant Administrator” means the  
35 Assistant Administrator for the National Marine Fisheries Service.

36 (2) COMMISSIONER.—The term “Commissioner” means the Commissioner of the  
37 Bureau of Reclamation.

38 (3) DELTA.—The term “Delta” means the Sacramento-San Joaquin Delta and the Suisun  
39 Marsh, as defined in sections 12220 and 29101 of the California Public Resources Code.

1       \*\* 10 ~~(4)~~(4) DELTA SMELT.—The term “Delta smelt” means the fish species with the  
2       scientific name *Hypomesus transpacificus*.

3       \*\* 11 ~~(2)~~(5) DIRECTOR.—The term “Director” means the Director of the United States  
4       Fish and Wildlife Service.

5       (6) EXPORT PUMPING RATES.—The term “export pumping rates” means the rates of  
6       pumping at the W.C. “Bill” Jones Pumping Plant and the Harvey O. Banks Pumping  
7       Plant, in the southern Delta.

8       \*\* 12 (7) ~~TO AVOID JEOPARDY.—THE TERM “TO AVOID JEOPARDY”~~ JEOPARDY.—The  
9       term “jeopardy” means to reduce appreciably the likelihood of both the survival and  
10      recovery of a listed species in the wild by reducing the reproduction, numbers, or  
11      distribution of that species.

12      (8) LISTED FISH SPECIES.—The term “listed fish species” means—

13          (A) listed salmonid species; and

14          (B) the Delta smelt.

15      (9) LISTED SALMONID SPECIES.—The term “listed salmonid species” means—

16          (A) natural origin steelhead;

17          (B) natural origin genetic spring run Chinook; and

18          (C) genetic winter run Chinook salmon.

19      (10)~~(2)~~ OMR.—The term “OMR” means the Old and Middle River in the Delta.

20      ~~(3)~~(11) OMR FLOW OF <sup>-</sup>5000 CFS.—The term “OMR flow of <sup>-</sup>5000 cfs” means Old  
21      and Middle River flow of negative 5,000 cubic feet per second as measured by—

22          (A) the smelt biological opinion; and

23          (B) the salmonid biological opinion.

24      ~~(4)~~(12) SALMONID BIOLOGICAL OPINION.—The term “salmonid biological opinion” means  
25      the biological opinion issued by the National Marine Fisheries Service on June 4, 2009, as  
26      amended, and any successor biological opinion.-

27      ~~(5)~~(13) SMELT BIOLOGICAL OPINION.—The term “smelt biological opinion” means the  
28      biological opinion on the Long-Term Operational Criteria and Plan for coordination of the  
29      Central Valley Project and State Water Project issued by the United States Fish and Wildlife  
30      Service on December 15, 2008, as amended, and any successor biological opinion.-

31      ~~(6)~~(14) STATE.—The term “State” means the State of California.

32  
33      ~~\* 12 (7) To avoid jeopardy.—The term “to avoid jeopardy” means to reduce appreciably~~  
34      ~~the likelihood of both the survival and recovery of a listed species in the wild by reducing~~  
35      ~~the reproduction, numbers, or distribution of that species.~~

36      \*\* 13 ~~(5)~~(15) STATE WATER PROJECT.—The term “State Water Project” means the water  
37      project described by California Water Code section 11550 et seq., and operated by the  
38      California Department of Water Resources.



TITLE I—ADJUSTING DELTA SMELT MANAGEMENT  
BASED ON INCREASED REAL-TIME MONITORING AND  
UPDATED SCIENCE

SEC. 101. ~~DEFINITIONS~~ DEFINITION OF SECRETARY.

In this title, the term “Secretary” means the Secretary of the Interior.:

~~\* 10 (1) Delta smelt. The term “Delta smelt” means the fish species with the scientific name Hypomesus transpacificus.~~

~~\* 11 (2) Director. The term “Director” means the Director of the United States Fish and Wildlife Service.~~

~~(3) Secretary. The term “Secretary” means the Secretary of the Interior.~~

SEC. 102. REVISION OF INCIDENTAL TAKE LEVEL  
CALCULATION FOR DELTA SMELT TO REFLECT NEW  
SCIENCE.

~~(a) In General. Not later than October 1, 2015, consistent with the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) (including regulations) and subsection (b), the Director shall modify the method of calculating the Director, in cooperation with other Federal, State, and local agencies, shall use the best scientific and commercial data available to complete a review and, if warranted, a modification of the incidental take level in the smelt biological opinion—~~  
~~opinion that takes into account, among other considerations—~~

~~(1) to use the best~~ (1) salvage information available from 1993 to 2012; over at least the 18-year period ending on the date of enactment of this Act;

~~(2) to take into account—~~

~~(A) updated~~ (2) updated or more recently developed statistical models;

~~(B) updated scientific data; and~~ (3) updated scientific and commercial data; and

~~(C) improved understanding of Delta smelt entrainment dynamics; and~~

~~(3) to better represent actual entrainment and the population level impact of entrainment while allowing operations according to the reasonable and prudent alternatives described in the smelt biological opinion.~~

~~(b) Modified Incidental Take Level. Unless the Director determines in writing that all~~

or part of the requirements described in paragraphs (1) through (4) are not appropriate, the modified incidental take level described in subsection (a) shall—

(1) be normalized for the abundance of prespawning adult Delta smelt using the Fall-Midwater Trawl Index or other index;

(2) be based on a simulation of the salvage that would have occurred from 1993 through 2012 if OMR flow had been consistent with the smelt biological opinion;

(3) base that simulation on a correlation between annual salvage rates and historic water clarity and OMR flow during the adult salvage period; and

(4) set the incidental take level as the 80 percent upper prediction interval derived from simulated salvage rates from 1993 through 2012. **(4) the most recent information regarding the environmental factors driving Delta smelt salvage.**

## SEC. 103. FACTORING INCREASED REAL-TIME MONITORING AND UPDATED SCIENCE INTO DELTA SMELT MANAGEMENT.

### (a) ~~In General.~~—**The Implementation of Alternatives.**—

**(1) IN GENERAL.**—The reasonable and prudent alternatives described in the smelt biological opinion shall be implemented consistent with ~~the~~ **current** best scientific and commercial data available.

**(2) ADJUSTMENTS.**—**Implementation shall be adjusted accordingly as new scientific and commercial data is developed.**

### (b) **Increased Monitoring to Inform Real-time Operations.**—

**(1) IN GENERAL.**—Subject to the availability of funding, the Secretary, in consultation with Delta science partners, shall conduct additional surveys to carry out this section on an annual basis at the appropriate time of the year based on environmental conditions.

**(2) ADMINISTRATION.**—In carrying out this section, after seeking public input, the Secretary shall —

**(A)** use the most appropriate survey methods for the detection of Delta smelt to determine the extent that adult Delta smelt are distributed in relation to certain levels of turbidity, or other environmental factors that may influence salvage rate; and

**(B)** use results from appropriate survey methods for the detection of Delta smelt to determine how the Central Valley Project and State Water Project may be operated more efficiently to minimize salvage while maximizing rates of water export.

**(3) ADDITIONAL MONITORING.**—~~Effective(b) Increased Monitoring to Inform Real-time Operations.~~—Effective during the period beginning on December 1, 2014, and ending March 31, 2015, and in each successive December through March period, if ~~high~~ suspended sediment loads enter the Delta from the Sacramento River and **the suspended sediment**



loads appear likely to raise turbidity levels in Old River north of the export pumps from values below 12 Nephelometric Turbidity Units to values above 12 Nephelometric Turbidity Units, the ~~Director shall~~ **Secretary shall**—

~~(1) conduct daily Kodiak Trawls in Old River in~~ **(A) conduct daily monitoring using appropriate survey methods at locations, including the vicinity of Station 902 to detect, to determine the extent that adult Delta smelt that might be are moving within the with turbidity cloud toward the export pumps; and**

~~(2) use results from those trawls to help~~ **(B) use results from the monitoring surveys at locations, including the vicinity of Station 902, to determine how increased trawling can inform in real time the maximum rates of exports without risk of causing jeopardy. daily real-time Central Valley Project and State Water Project operations to minimize salvage while maximizing rates of water export.**

(c) Periodic Review of Monitoring.—At least once every 5 years, ~~the Director or earlier if the Secretary determines appropriate, the Secretary shall~~—

(1) evaluate whether the monitoring program under subsection (b), combined with other monitoring programs for the Delta, is providing sufficient data to inform ~~operations~~ **Central Valley Project and State Water Project operations to minimize salvage while maximizing rates of water export; and**

(2) determine whether the monitoring efforts should be changed in the short- or long-term to provide more useful data.

(d) Delta Smelt Distribution Study.—

~~(1) IN GENERAL.—IN 2015, AND EVERY 5 YEARS THEREAFTER, THE UNITED STATES FISH AND WILDLIFE SERVICE SHALL PERFORM TARGETED SAMPLING STUDIES AND MONITORING TO DETERMINE THE GEOGRAPHIC AREAS AND GENERAL.—~~ **Not later than January 1, 2016, subject to the availability of funding, the Secretary, in consultation with Delta science partners, shall implement new targeted sampling and monitoring specifically designed to understand Delta smelt abundance, distribution, and the types of habitat occupied by Delta smelt during all life stages.**

~~(2) SAMPLING.—The sampling—~~ **Delta smelt distribution study required under paragraph (1) shall, at a minimum—**

~~(A) shall~~ **(A) include recording water quality and tidal data;**

~~(B) should generally occur in~~ **be designed to understand Delta smelt abundance, distribution, habitat use, and movements throughout the Delta during all seasons;**

**(C) consider** areas not routinely sampled by existing monitoring programs, including wetland channels, near-shore water, depths below 35 feet, and shallow-water; and

~~(C) may require sampling gears not used during existing monitoring programs.~~ **(D) use the most biologically appropriate survey methods, including sampling gear suited to the type of sampling or monitoring.**

(e) Scientifically Supported Implementation of Old and Middle River Flow Requirements.—Effective beginning ~~December 1, 2014, in managing negative~~

1 **Requirements.—In implementing the provisions of the smelt biological opinion on reverse**  
2 **flow in the Old and Middle Rivers from December to June within the range established by the**  
3 **smelt biological opinion or any successor biological opinion, the Secretary shall—**

4 (1) consider the relevant provisions of the ~~biological opinion or any successor opinion;~~  
5 **smelt biological opinion;**

6 ~~(2) document~~ **(2) manage reverse flow in Old and Middle Rivers, as prescribed by**  
7 **the smelt biological opinion, to minimize water supply reductions for the Central**  
8 **Valley Project and the State Water Project;**

9 **(3) document in writing** any significant facts about real-time conditions relevant to the  
10 determinations of the Secretary of rates at which reverse OMR flow ~~will be managed rates,~~  
11 including—

12 (A) whether targeted real-time fish monitoring in Old River ~~in the vicinity of Bacon~~  
13 ~~Island~~ pursuant to this section, **including monitoring in the vicinity of Station 902,**  
14 indicates that a significant increase in the salvage of Delta smelt is imminent; and

15 (B) whether near-term forecasts with available salvage models show under  
16 prevailing conditions that OMR flow of ~~-5000 cfs~~ **^5000 cubic feet per second** will  
17 cause ~~substantially~~ **significantly** increased take of Delta smelt;

18 **and**

19 ~~(3) document—~~

20 ~~(A) the basis for the determination of the Secretary to require raised or lowered OMR~~  
21 ~~flow level within the range established by the smelt biological opinion or any successor~~  
22 ~~biological opinion~~ **(4) show in writing that any determination to manage OMR reverse**  
23 **flow at rates less negative than ^5000 cubic feet per second is necessary to avoid a**  
24 **negative impact on the long-term survival of the Delta smelt, including an explanation of**  
25 **the data examined and the connection between the data and the choice made; and, after**  
26 **considering—**

27 ~~(B) in accordance with subsection (f)(2), a showing that any limitation of OMR flow~~  
28 ~~to levels less negative than -5000 cubic feet per second in the short term is necessary to~~  
29 ~~avoid jeopardy after considering other alternatives, if any, that may~~ **(A) the findings**  
30 **under paragraph (3);**

31 **(B) whether continued project operations over the remainder of the water year**  
32 **would exceed the incidental take level;**

33 **(C) the potential effects of entrainment on subsequent smelt abundance,**  
34 **including consideration of the distribution of the population throughout the**  
35 **Delta;**

36 **(D) the water temperature;**

37 **(E) other factors relevant to the determination; and**

38 **(F) whether any alternative measures could have a lesser water supply impact;**  
39 **and**

40 **(5) for any subsequent biological opinion, make the showing required under**

paragraph (4) for any determination to manage OMR reverse flow at rates less negative than the upper limit in the smelt biological opinion.

**(f) Memorandum of Understanding.—**

**(1) IN GENERAL.—**Not later than December 1, 2014, the Commissioner and the Director shall enter into a memorandum of understanding to ensure that the smelt biological opinion is implemented in a manner that minimizes water supply losses while complying with applicable laws (including regulations).

**(2) CHANGES TO SMELT BIOLOGICAL OPINION.—**

**(A) IN GENERAL.—**If the memorandum of understanding changes any procedures established under the smelt biological opinion, additional consultation shall not be required if—

**(i)** the changes do not have an adverse effect on listed species; and

**(ii)** the implementation of the memorandum of understanding would not be a major change to implementation of the smelt biological opinion.

**(B) TAKE EXEMPTION.—**Any change to the procedures that does not create a new adverse effect to a listed species shall not alter application of the take exemption in the incidental take statement in the biological opinion under section 7(o)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1536(o)(2)).

**(f) Requirements.—**

~~(1) Level of detail required for analysis.—~~In documenting the determinations under subsection (e), the Secretary shall fully satisfy the requirements of paragraphs (1) through (3) of subsection (e) but is not required to provide a greater level of supporting detail for the analysis than feasible to provide within the short time frame permitted for timely decisionmaking in response to changing conditions in the Delta.

~~(2) Effect of managing negative flow.—~~In making a showing under subsection (e)(3)(B), the Secretary shall consider the effects of managing negative flow in Old and Middle River flow consistent with—

~~(A) the definition of the term “effects of the action” contained in part 402.02 of title 50, Code of Federal Regulations (as in effect on the date of enactment of this Act); and~~

~~(B) the definitions included in this title.~~

## **TITLE II—ENSURING SALMONID MANAGEMENT IS RESPONSIVE TO NEW SCIENCE**

### **SEC. 201. DEFINITIONS. DEFINITION OF SECRETARY.**

~~In this title:~~

~~(1) Assistant administrator.—~~The term “Assistant Administrator” means the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration.

~~(2) Director.—~~The term “Director” means the Director of the National Marine Fisheries Service.

~~(3) Listed salmonid species.—The term “listed salmonid species” means natural origin steelhead, natural origin genetic spring run Chinook, and genetic winter run salmon smolts.~~

~~(4) Secretary.—The In this title, the term “Secretary” means the Secretary of Commerce.~~

## SEC. 202. REQUIRED SCIENTIFIC STUDIES.

~~(a) Trap and Barge Pilot Project to Increase Survival Through the Delta.—Not later than March 1, 2015, the Director~~ **Delta.**—

**(1) IN GENERAL.—The Assistant Administrator and the Commissioner, in collaboration with the Director of United States Fish and Wildlife Service, the California Department of Fish and Wildlife, and other interested parties, shall design, permit, implement, and evaluate a pilot program to test the efficacy of an experimental trap and barge program to improve survivals of juvenile salmonids shall issue necessary permits and otherwise facilitate—**

~~(1) implementing a pilot program to trap juvenile listed salmonids species emigrating from the San Joaquin River basin and provide for the safe passage of the listed salmonid species by barge to the Western Delta; and watershed through the Delta.~~

~~(2) conducting studies to evaluate the effectiveness of the pilot program.~~ **(2) PLAN.—**

~~(b) Enhanced Steelhead Study.—~~

~~(1)(A) IN GENERAL.—Not later than December 31, 2015, the Director, in collaboration with the Director of the California Department of Fish and Wildlife, California public water agencies, and scientific investigators, shall report results of an expanded 6 year steelhead study specified in the salmonid biological opinion.~~

~~(2) Requirements.—The field investigations for the 6 year steelhead study, to be completed during spring 2015, shall, at a minimum—~~

~~(A) include acoustic tagging of natural origin steelhead smolts captured during the pilot trap and barge program described in subsection (a) if fish of suitable size and condition are available;~~

~~(B) include an experimental manipulation of exports under which exports will range both substantially above and substantially below levels studied previously;~~

~~(C) include a sample size of acoustically tagged fish sufficient to detect an effect at least as small as a 10 percent change in absolute survival among experimental treatments;~~

~~(D) if available, use new acoustic tags capable of signaling when a tagged smolt has been consumed by a predator; and~~

~~(E) be conducted without the Head of Old River Barrier in place so that tagged fish may migrate through the Old River route.~~

~~(c) Experimental Variability.—Nothing in the 2009 salmonid biological opinion referred to in section 2(1) or any successor biological opinion shall prohibit limited periods of exports that exceed applicable limits for the purpose of scientific inquiry, subject to rescheduling or cancellation of any exports that exceed applicable limits in~~

1 ~~the biological opinions if the Secretary of the Interior or the Secretary determines that~~  
2 ~~it is necessary to do so to avoid jeopardy.~~ **30 days after the date of enactment of this**  
3 **Act, the Assistant Administrator shall convene a working group of the relevant**  
4 **agencies and other interested parties to develop and execute a plan for the design,**  
5 **budgeting, implementation, and evaluation of the pilot program described in**  
6 **paragraph (1), using existing expertise on trap and barge programs as may be**  
7 **available.**

8 **(B) CONTENTS.—The plan shall describe—**

9 **(i) a schedule and budget for the program; and**

10 **(ii) the responsible parties for each element of the program.**

11 **(3) REVIEW.—The Assistant Administrator shall simultaneously—**

12 **(A) provide an opportunity for public review and comment on the pilot**  
13 **program; and**

14 **(B) ensure an expeditious independent peer review of the program to improve**  
15 **the rigor and likelihood of success of the program.**

16 **(4) PILOT PROGRAM.—After carrying out paragraph (2), the Assistant**  
17 **Administrator shall—**

18 **(A) complete the necessary design and evaluations of the pilot program; and**

19 **(B) seek such authorizations and permits as may be required for the prompt**  
20 **implementation and evaluation of the pilot program by the Assistant**  
21 **Administrator, the Commissioner, or such other parties as the Assistant**  
22 **Administrator and Commissioner determine appropriate.**

23 **(5) DURATION.—Subject to the availability of funding, the Assistant Administrator**  
24 **and the Commissioner shall—**

25 **(A) to the maximum extent practicable, commence implementation of the pilot**  
26 **program during calendar year 2015 or as soon thereafter as practicable; and**

27 **(B) conduct the pilot program for such period of time as is necessary to**  
28 **evaluate the efficacy of the program to improve survivals across a range of**  
29 **environmental conditions.**

30 **(6) ANNUAL REPORTS.—The Assistant Administrator and the Commissioner shall**  
31 **jointly report annually to the Committee on Environment and Public Works of the**  
32 **Senate and the Committee on Natural Resources of the House of Representatives on**  
33 **progress made in carrying out this subsection, including—**

34 **(A) estimated survival rates through the Delta for both juvenile salmonids that**  
35 **were barged through the Delta and juvenile salmonids that were not barged; and**

36 **(B) if survival rates are significantly higher for barged fish as compared to**  
37 **other outmigrating smolts, recommendations regarding broadening the pilot**  
38 **program and adjusting any relevant recommendations under section 203.**

39 **(b) Tagging Studies.—**

1           **(1) IN GENERAL.—The Assistant Administrator, in consultation with Delta science**  
2           **partners—**

3                   **(A) shall carry out tagging studies, including acoustic telemetry and Passive**  
4                   **Integrated Transponder (PIT) tagging studies as appropriate, under which**  
5                   **habitat, predators, flow conditions, or other factors are experimentally altered**  
6                   **and the behavior and survival of tagged juvenile salmonids are observed; and**

7                   **(B) may carry out additional studies may to aid in the understanding of**  
8                   **Chinook salmon and steelhead abundance, distribution, and survival.**

9           **(2) SAMPLING.—Sampling under paragraph (1)(A) shall—**

10                   **(A) include recording water quality and tidal data;**

11                   **(B) be designed to aid in the understanding of salmonid abundance,**  
12                   **distribution, and movements throughout the Bay Delta, including estimates of**  
13                   **Delta survival from Knights Landing or from Mossdale to Chipps Island; and**

14                   **(C) supplement, not supplant, ongoing acoustic tag and coded wire survival**  
15                   **studies in the San Joaquin and Sacramento Rivers that the Assistant**  
16                   **Administrator determines are crucial for trend monitoring.**

## 17   **SEC. 203. PROCESS FOR ENSURING SALMONID** 18   **MANAGEMENT IS RESPONSIVE TO NEW SCIENCE.**

19           **(a) Purpose.—In response to the significant new science since the adoption In General.—The**  
20           **Commissioner and the Assistant Administrator shall implement, in accordance with this**  
21           **section, the reasonable and prudent alternative described in the salmonid biological**  
22           **opinion—**

23                   **(1) to allow for and anticipate adjustments in operating criteria to reflect the best**  
24                   **scientific and commercial data currently available; and**

25                   **(2) to test and evaluate improvements in operations that will meet applicable**  
26                   **regulatory requirements and enable improvements in water supply reliability.**

27           **(b) Annual Reviews of Certain Operating Criteria.—**

28                   **(1) IN GENERAL.—Not later than December 31, 2015, and at least annually**  
29                   **thereafter, subject to paragraph (4), the Commissioner, in consultation with and with**  
30                   **the assistance of the Assistant Administrator, shall examine and identify—**

31                   **(A) adjustments to the initiation of Action IV.2.3 of the salmonid biological**  
32                   ~~opinion over 5 years before the date of enactment of this Act, the Secretary shall issue~~  
33                   ~~a written reevaluation and determination, in accordance with the standards and~~  
34                   ~~procedures described in subsections (b) through (e), of whether— relating to negative~~  
35                   **OMR flows; and**

36                   ~~(1) certain water export limitations in~~**(B) adjustments in the timing, triggers, or**  
37                   **other operational details relating to the implementation of pumping restrictions**  
38                   **under Action IV.2.1 of the salmonid biological opinion are necessary to avoid**  
39                   ~~jeopardy; or~~



~~(2) the water export limitations provide minor benefits that are either unnecessary for species survival or can be more effectively achieved through broadening or initiating any of a range of alternative management measures.~~

~~(b) Framework for Evaluating the Necessity of Management Measures for Avoiding Jeopardy.—~~

~~(1) In general.—In order to evaluate whether water export limitations existing or proposed as of the date of enactment of this Act are necessary to avoid jeopardy in light of new science, the Secretary shall estimate the extent to which those export restrictions contribute to the survival of the species as compared to the contributions to species survival from other management measures pursuant to paragraph (2).~~

~~(2) Estimates of extent to which different management measures contribute to species survival.—Not relating to the inflow to export requirements~~

**(2) RECOMMENDATIONS.—Pursuant to the consultation and assessments carried out under paragraph (1), the Commissioner shall make recommendations to the Assistant Administrator on adjustments that, in the exercise of the adaptive management provisions of the salmonid biological opinion, can improve water supplies and are consistent with subsection (a) and other requirements of applicable law.**

**(3) IMPLEMENTATION.—The Commissioner shall implement adjustments described in paragraph (2) for which the conditions of subsection (c) are met.**

**(4) SUCCESSOR BIOLOGICAL OPINION.—The Assistant Administrator and the Commissioner shall review and identify adjustments to water supply restrictions in any successor biological opinion to the salmon biological opinion to apply the requirements of this section to those water supply restrictions in cases in which there are references to Actions IV.2.1 and IV.2.3 of the salmonid biological opinion.**

**(c) Adjustments.—On receiving the recommendations under subsection (b), the Assistant Administrator shall—**

**(1) evaluate the effects of the recommended adjustments on listed species; and**

**(2) recommend to the Commissioner adjustments for which—**

**(A) the net effect on listed species is equivalent to the net effect using the underlying criteria, taking into account whatever actions or measures may be implemented in conjunction with the adjustments to mitigate the effects of the adjustments; and**

**(B) the effects of the adjustments fall within the incidental take authorizations.**

**(d) Offsetting Species Survival Benefits From Other Measures.—**

**(1) IN GENERAL.—When examining opportunities to offset the potential adverse effect of adjustments under subsection (b) to operating criteria under this section, the Commissioner and the Assistant Administrator shall take into account the potential salmonid survival improvements that are likely to result from other measures that, if implemented in conjunction with the adjustments, would offset the adverse effects of the adjustments.**

1           (2) **ADMINISTRATION.**—When considering offsetting measures, the Commissioner  
2           and the Assistant Administrator shall—

3                   (A) consider the type, timing and nature of the adverse effects to specific  
4                   species; and

5                   (B) ensure that the measures provide equivalent overall benefits to the listed  
6                   species in the aggregate, as long as the change in survival rates for each species  
7                   remains consistent with the Endangered Species Act of 1973 (16 U.S.C. 1531 et  
8                   seq.) (including regulations).

9           (3) **WATER DISTRICTS.**—The offsetting measures may include actions implemented  
10           with the support of a substantial contribution from water districts that would benefit  
11           from the adjustments.

12           (e) **Framework for Examining Opportunities to Minimize or Offset the Potential Adverse**  
13           **Effect of Adjustments to Operating Criteria.**—Not later than December 31, 2016 2015, and  
14           every 5 years thereafter, the Secretary shall, in collaboration Assistant Administrator, in  
15           consultation with the Director of the California Department of Fish and Wildlife, based on the  
16           best scientific and commercial data available and giving greater weight to more recent data better  
17           reflecting current conditions in the Delta, for each listed salmonid species, issue final estimates  
18           of the increase in through-Delta survival the Secretary expects to be achieved—

19                   (A)(1) with export restrictions specified within RPA Actions IV.2.1 that limit flow to—as  
20                   specified by Reasonable and Prudent Action IV.2.3 of the salmonid biological opinion  
21                   as compared to limiting OMR flow to a fixed rate of ^5000 cubic feet per second  
22                   compared to limiting flow to 2500 cubic feet per second within the time period Action  
23                   IV.2.3 of the salmonid biological opinion is applicable, based on a given rate of San  
24                   Joaquin River inflow to the Delta and holding other relevant factors constant;

25                   (B)(2) with San Joaquin River inflow to export restrictions specified within RPA  
26                   Actions IV.2.3 as compared to inflow to export requirements found in Reasonable and  
27                   Prudent Action IV.2.1 of the salmonid biological opinion as compared to in the export  
28                   restrictions in the April and May period imposed by the State Water Resources Control  
29                   Board decision D-1641, based on a given rate of San Joaquin River inflow to the Delta and  
30                   holding other relevant factors constant;

31                   (C)(3) by a trap-and-barge program based on the experience of other comparable systems  
32                   and the studies systems to the extent the systems are comparable, and the study  
33                   described in section 202, as that information becomes available;

34                   (D)(4) through physical habitat enhancement programs; restoration improvements;

35                   (E)(5) through predation control programs;

36                   (F)(6) through the use of temporary barriers, the Cross Channel Gates, Head of Old River  
37                   Barrier, and other projects affecting flow in the Delta;

38                   (G) by implementing a trapping program at (7) by salvaging fish that may be entrained  
39                   near the entrance to Clifton Court Forebay to capture and provide safe transport for  
40                   entrained juvenile salmonids to the western Delta; and; and

41                   (H) through the use of other management programs. (8) by any other management



measures that may provide equivalent or better benefits for listed species with improvements to water supplies.

(3) ~~Estimates to be quantitative to the maximum extent practicable.~~—(f) **Survival Estimates to Be Quantitative to the Maximum Extent Feasible.**—

(A)(1) ~~IN GENERAL.~~—To the maximum extent practicable, ~~in estimating the benefits to the species from the management measures described in paragraph (2), the Secretary shall provide quantitative estimates~~ **feasible, the Assistant Administrator shall make the estimates and determinations described in subsection (e) quantitatively**, such as a range of percentage increases in through-Delta survival that could result from the management measures.

(B)(2) **QUALITATIVE ESTIMATES.**—If the ~~Secretary~~ **Assistant Administrator** cannot provide a quantitative estimate of the benefits to the species from a particular management measure, the ~~Secretary shall qualitatively estimate the benefits.~~ **Assistant Administrator shall provide qualitative estimates of the benefits that are based on the best available science.**

(C) ~~Ranking.~~—If the Secretary(3) **RANKING.**—If the **Assistant Administrator** provides qualitative estimates of the benefits to the species from 1 or more management measures, the Secretary shall, to the maximum extent ~~practicable~~ **feasible**, rank the management measures described in ~~paragraph (2)~~ **subsection (e)** in terms of the most likely expected contribution to increased through-Delta survival relative to the other measures.

~~(4) Draft estimates, public comment, and schedule.—~~

(A) ~~In general.~~—The Secretary shall—

(i) ~~not later than February 1, 2015, make available to the public the study design, including the data and analyses that the Secretary intends to use, for determining estimates of increased through Delta survival benefits for the species; and~~

(ii) ~~provide an opportunity for public comment on the study design until April 30, 2015.~~

(B) ~~Draft estimates.—~~

(i) ~~In general.~~—Not later than December 31, 2015, the Secretary shall—

(I) ~~issue draft estimates that will temporarily serve as a reference until the Secretary issues the final estimates; and~~

(II) ~~concurrent with issuance of the draft estimates, make available to the public all data and analyses that were used or relied on to develop the draft estimates.~~

(ii) ~~Public comment.~~—The Secretary shall provide an opportunity for public comment on the ~~draft estimates for a period of 4 months.~~

(5) ~~Revisions to estimates.~~—The Secretary shall update the final estimates—

(A) ~~if requested to do so by the Governor of California, after the end of the 5-year period beginning on the date of the last update; and~~

(B) ~~in accordance with the process described in paragraph (4), other than the deadlines prescribed for specific calendar dates.~~

1       ~~(c) Scientifically Supported Implementation of Old and Middle River Flow~~  
2       ~~Requirements.—~~

3       ~~(1) In general.— Nothing in this subsection affects the limitation of OMR flow that is~~  
4       ~~greater (more negative) than 5000 cubic feet per second, as described in the salmonid~~  
5       ~~biological opinion.~~

6       ~~(2) Requirements.—~~

7       ~~(A) In general.— Beginning January 1, 2016, in managing OMR River flow pursuant to~~  
8       ~~the salmonid biological opinion or any successor biological opinion, the Secretary shall—~~

9       ~~(i) consider the relevant provisions in the 2009 biological opinion or any successor-~~  
10       ~~biological opinion and other relevant data; and~~

11       ~~(ii) articulate the basis for the determination of the Secretary to require raised or lowered~~  
12       ~~OMR flow levels within the range established by the salmonid biological opinion or any~~  
13       ~~successor biological opinion, including—~~

14       ~~(I) an explanation of the data examined and the connection between the data and the~~  
15       ~~choice made; and~~

16       ~~(II) in accordance with subparagraph (B), a showing that any limitation of OMR flow to~~  
17       ~~levels less negative than 5000 cubic feet per second in the short term is necessary to avoid~~  
18       ~~jeopardy.~~

19       ~~(B) Effect of managing negative flow.— In making a showing under subparagraph~~  
20       ~~(A)(ii)(II), the Secretary shall consider the effects of managing negative flow in Old and~~  
21       ~~Middle River flow consistent with—~~

22       ~~(i) the definition of the term “effects of the action” contained in part 402.02 of title 50,~~  
23       ~~Code of Federal Regulations (as in effect on the date of enactment of this Act); and~~

24       ~~(ii) the definitions included in this title.~~

25       ~~(3) Explanation.— In any analysis of potential jeopardy conducted pursuant to paragraph~~  
26       ~~(2)(A)(ii), the Secretary shall explain why implementation of OMR flow rate less negative~~  
27       ~~than 5,000 cubic feet per second is necessary to avoid jeopardy, including by determining~~  
28       ~~that—~~

29       ~~(A) it is not technically feasible or within Federal jurisdiction to achieve any increased~~  
30       ~~survival benefit of the same or greater quantity from broadening or initiating any of the~~  
31       ~~management measures described in subsection (b)(2) or other alternative management~~  
32       ~~measures, including measures implemented with the support of a substantial contribution~~  
33       ~~from water districts;~~

34       ~~(B) if it is technically feasible and within Federal jurisdiction to implement any such~~  
35       ~~alternative management measures, the adverse consequences of doing so exceed the adverse~~  
36       ~~consequences of limiting OMR flow to levels less negative than 5000 cubic feet per~~  
37       ~~second, including a concise evaluation of the adverse consequences to other affected~~  
38       ~~interests; or~~

39       ~~(C) it is technically feasible but not within Federal jurisdiction to implement certain~~  
40       ~~alternative management measures, in which case the Secretary shall specifically describe~~

the determination and the 1 or more alternative management measures.

(4) COMPARISON OF BENEFITS.—If at the time the **Secretary Assistant Administrator** conducts the analysis under ~~paragraph (3)~~ **subsection (b)**, the Secretary has not issued the ~~draft or final~~ estimates of increased through-Delta survival benefits from different management measures pursuant to subsection ~~(b)~~**(e)**, the Secretary shall compare the benefits to the species from different management measures based on the best scientific and commercial data available at the time.

~~(d) Scientifically Supported Implementation of Inflow and Export Requirements.—(g)~~  
**Comparison of Adverse Consequences for Alternative Management Measures of Equal Benefit to the Salmon.—**

~~(1) In general.—Beginning April 1, 2016, in relation to the provisions limiting the ratio of water exports from the Delta in relation to flow in the San Joaquin River beyond what is required under the State Water Resources Control Board Decision D 1641 pursuant to the salmonid biological opinion and any successor biological opinion, the Secretary shall—(1)~~  
**DEFINITIONS.—In this subsection:**

~~(A) consider the relevant provisions in the biological opinion and other relevant data; and~~  
**(A) EQUIVALENT ALTERNATIVE MEASURE.—The term “equivalent alternative measure” means an alternative management measure or combination of alternative management measures described in paragraph (2).**

~~(B) articulate an explanation, including of the data examined and the connection between the data and the choice made, as to why a limitation beyond that required under the State Water Resources Control Board Decision D 1641 in the short term is necessary to avoid jeopardy as a prerequisite to continuing~~  
**(B) EQUIVALENT EXISTING MEASURE.—The term “equivalent existing measure” means 1 or more existing measures described in subparagraph (A), (B), (C), or (D) of paragraph (2).**

**(C) EQUIVALENT INCREASE IN THROUGH-DELTA SURVIVAL RATES FOR LISTED SALMONID SPECIES.—The term “equivalent increase in through-Delta survival rates for listed salmonid species” means an increase in through-Delta survival rates that is equivalent when considering the change in through-Delta survival rates for the listed salmonid species in the aggregate, and not necessarily the same change for each individual species, as long as the change in survival rates for each species remains consistent with the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) (including implementing regulations).**

**(2) ALTERNATIVE MANAGEMENT MEASURES.—As part of the reviews of operating criteria pursuant to subsection (b), the Assistant Administrator shall determine whether any alternative management measures or combination of alternative management measures described in paragraphs (3) through (8) of subsection (e) would provide an increase in through-Delta survival rates for listed salmonid species that is equivalent to the increase in through-Delta survival rates for listed salmonid species from the following:**

**(A) With export restrictions as specified by Action IV.2.3 of the salmonid biological opinion, as compared to limiting OMR flow to a fixed rate of ^5000 cubic feet per second within the time period in ~~or any equivalent successor~~**

provision.

(2) **Requirements.**—In any analysis of potential jeopardy conducted under paragraph (1)(B), the Secretary shall explain why implementation of a limitation beyond that required under the State Water Resources Control Board Decision D-1641 in the short-term is necessary to avoid jeopardy as a prerequisite to continuing Action IV.2.3 of the salmonid biological opinion or any equivalent successor provision is necessary to avoid jeopardy, including by determining— as applicable.

(A) it is not technically feasible or within Federal jurisdiction to achieve any increased survival benefit of the same or greater quantity from broadening or initiating any of the management measures described in subsection (b)(2) or other alternative management measures, including measures implemented with the support of a substantial contribution from water districts; **(B) With export restrictions as specified by Action IV.2.3 of the salmonid biological opinion, as compared to a modification of Action IV.2.3 of the salmonid biological opinion that would provide additional water supplies, other than that described in subparagraph (A).**

(B) if it is technically feasible and within Federal jurisdiction to implement any such alternative management measures, the adverse consequences of doing so exceed the adverse consequences of limiting the ratio of water exports from the Delta in relation to flow in the San Joaquin River beyond what is required under **(C) With San Joaquin River inflow to export restrictions specified within Action IV.2.1 of the salmonid biological opinion, as compared to the export restrictions in the April/May period imposed by the State Water Resources Control Board Decision D-1641, including a concise evaluation of the adverse consequences to other affected interests; or decision D-1641.**

~~(C)~~ **(D) With San Joaquin River inflow to export restrictions specified within Action IV.2.1 of the salmonid biological opinion, as compared to a modification of Action IV.2.1 that would provide additional water supplies, other than that described in subparagraph (C).**

**(3) EQUIVALENT ALTERNATIVE MEASURES.**—If the Assistant Administrator identifies an equivalent alternative measure pursuant to paragraph (2), the Assistant Administrator shall determine whether—

(A) it is technically feasible ~~but not~~ **and** within Federal jurisdiction to implement certain such alternative management measures, in which case the Secretary shall specifically describe the determination and the 1 or more alternative management measures: **the equivalent alternative measure; and**

(3) **Comparison of benefits.**—If at the time the Secretary conducts the analysis in paragraph (2), the Secretary has not issued the draft or final estimates of increased **(B) the adverse consequences of doing so are less than the adverse consequences of the equivalent existing measure, including a concise evaluation of the adverse consequences to other affected interests.**

**(4) OPERATING CRITERIA.**—If the Assistant Administrator makes the findings in subparagraphs (A) and (B) of paragraph (3), the Assistant Administrator and the Commissioner shall adjust the operating criteria in the salmonid biological opinion

pursuant to this subsection to implement the equivalent alternative measure in place of the equivalent existing measure in order to increase water supplies to the maximum extent practicable while maintaining a net combined effect of equivalent through-Delta survival benefits from different management measures pursuant to subsection (b), the Secretary shall compare the benefits to the species from different management measures based on the best scientific and commercial data available at the time. rates for the listed salmonid species.

**(h) Tracking Adverse Effects Beyond the Range of Effects Accounted for in the Salmonid Biological Opinion and Coordinated Operation With Smelt Biological Opinion.—**

**(1) IN GENERAL.—**Among the adjustments to the operational criteria considered through the adaptive management process under this section, the Assistant Administrator and the Commissioner shall—

**(A)** evaluate the effect on listed salmonid species and water supply of the potential adjustment to operational criteria described in subparagraph (B); and

**(B)** consider requiring that before all or part of the provisions of Action IV.2.1 or IV.2.3 of the salmonid biological opinion are imposed in any specific instance, the Assistant Administrator show that the implementation of those provisions in that specific instance is necessary to avoid additional adverse effects on listed salmonid species beyond the range of effects analyzed and accounted for in the salmonid biological opinion.

**(2) OPERATIONAL CRITERIA.—**The Assistant Administrator, the Director, and the Commissioner, in coordination with State officials as appropriate, shall establish operational criteria to coordinate management of OMR flows under the smelt biological opinion and the salmonid biological opinion, to take advantage of opportunities to provide additional water supplies from the coordinated implementation of the smelt biological opinion and the salmonid biological opinion.

**(i) Real-time Monitoring and Management.—**

**(1) IN GENERAL.—**The Assistant Administrator and the Commissioner shall, through the adaptive management provisions of the National Marine Fisheries Service of the salmonid biological opinion, analyze whether date-certain triggers that limit OMR reverse flow to ^5000 cubic feet per second could be adjusted to instead use real-time migration information on salmonids.

**(2) IMPLEMENTATION.—**If the analysis shows that the use of real-time information to trigger OMR flow limitations would improve water supply without causing significant adverse effects to Winter-run Chinook salmon, the real-time management triggers shall be implemented.

**SEC. 204. PILOT PROGRAM TO PROTECT CERTAIN  
NATIVE ANADROMOUS FISH IN STANISLAUS RIVER.**

**(a) Definitions.—**In this section:

**(1) Commissioner.—**The term “Commissioner” means the Commissioner of Reclamation.

(2) DISTRICTS.—The term “districts” means—

(A) the Oakdale Irrigation District; and

(B) the South San Joaquin Irrigation District.

(3)(2) PILOT PROGRAM.—The term “pilot program” means the nonnative predator removal pilot program established under ~~subsection (b)(1)~~ **this section**.

~~(b) Establishment of Pilot Program.—~~

~~(1) In general.—The~~ **(b) Establishment.—**The Assistant Administrator, in consultation with the Director of the United States Fish and Wildlife Service and the head of the California Department of Fish and Wildlife, shall ~~establish and carry out a~~, **subject to the availability of funding, develop and conduct a pilot** nonnative predator fish removal ~~pilot~~ program to remove from the **areas in and around the Delta, including the Stanislaus River—**

~~(A)~~(1) nonnative striped bass;

~~(B)~~(2) nonnative smallmouth bass;

~~(C)~~(3) nonnative largemouth bass;

~~(D)~~(4) nonnative black bass; and

~~(E)~~(5) other nonnative predator fish.

~~(2)~~(c) Requirements.—The pilot program shall—

~~(A)~~(1) be scientifically based;

~~(B)~~(2) include methods to quantify, by, among other methods, evaluating the number of juvenile anadromous fish that migrate past the rotary screw trap located at ~~[Caswell]~~—  
**Caswell—**

~~(i)~~(A) the number and size of predator fish removed ~~from the Stanislaus River under the pilot program each year~~; **each year from the program area;**

~~(ii)~~(B) the impact of the removal on the overall abundance of predator fish in the ~~Stanislaus River~~; **program area;** and

~~(iii)~~(C) the impact of the removal on the populations of juvenile anadromous fish found in the Stanislaus River **and elsewhere;**

~~(C)~~(3) among other methods, use wire fyke trapping, portable resistance board weirs, and boat electrofishing, which are among the most effective predator collection techniques that minimize effects to native anadromous fish;

~~(D)~~(4) be developed by not later than 180 days after the date of enactment of this Act, including the application for all necessary scientific research and species enhancement permits under section 10(a)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)) for the performance of the pilot program;

~~(E)~~(5) be implemented on the first business day of the calendar year following the date of issuance of all necessary scientific research and species enhancement permits ~~required and~~ **funding needed** to commence the pilot program; and

~~(F)~~(6) be implemented for a period of 7 consecutive calendar years.



1 ~~(e)~~(d) Management.—

2 (1) IN GENERAL.—The management of the pilot program shall be the joint responsibility  
3 of the Assistant Administrator and the districts. **Assistant Administrator may and is**  
4 **encouraged to enter into agreements with interested local water districts to jointly**  
5 **develop, implement and evaluate the pilot program.**

6 ~~(2) Requirements.—The Assistant Administrator and the districts shall—~~(2)  
7 **ADMINISTRATION.—Parties to an agreement under paragraph (1) are encouraged—**

8 ~~(A)~~(A) to work collaboratively to ensure the performance of the pilot program; and

9 (B) ~~collaborate~~ **to discuss** and agree on, among other elements, changes in the  
10 structure, management, personnel, techniques, strategy, data collection, reporting, and  
11 conduct of the pilot program.

12 ~~(d) Conduct.—~~(e) **Implementation.—**

13 ~~(1) Election by districts.—At the election of the~~(1) **IN GENERAL.—On agreement**  
14 **between the Assistant Administrator and any participating** districts, the pilot program  
15 may be carried out by—

16 (A) personnel employed by the districts;

17 (B) qualified private contractors hired by the districts;

18 (C) personnel employed by, on loan to, or otherwise assigned to ~~fisheries of the~~  
19 ~~Assistant Administrator;~~ **the National Marine Fisheries Service;** or

20 (D) any combination of individuals and entities described in subparagraphs (A)  
21 through (C).

22 (2) ~~PARTICIPATION BY NOAA FISHERIES.—~~ **THE NATIONAL MARINE FISHERIES SERVICE.—**

23 (A) IN GENERAL.—If the districts elect pursuant to paragraph (1) to conduct the pilot  
24 program using the personnel employed, or qualified private contractors hired, by the  
25 districts, the Commissioner may assign an individual described in paragraph (1)(C) to  
26 be present for any field activity carried out under the pilot program to ensure  
27 compliance with ~~the elements specified in subsection (e)(2)(B).~~ **subsection (c).**

28 ~~(B) Costs.—The~~(B) **COSTS.—Subject to subsection (f), the** districts shall pay 100  
29 percent of the cost of participation by any individual under subparagraph (A).

30 (3) **TIMING OF ELECTION.—**The districts shall—

31 (A) make an election under paragraph (1) with respect to the following calendar year  
32 for each calendar year during which the pilot program is conducted; and

33 (B) notify the Assistant Administrator of that election by not later than October 15  
34 of the calendar year during which the election is made.

35 ~~(e)~~(f) Funding.—

36 (1) ~~RESPONSIBILITY OF DISTRICTS.—~~ **ANNUAL FUNDING.—**

37 (A) IN GENERAL.—The ~~districts shall be responsible for 100 percent of the costs of~~  
38 ~~the pilot program.~~ **Commissioner, the Assistant Administrator, and the**

1 **participating districts shall develop a budget and funding plan for the pilot**  
2 **project that will allocate costs appropriately among the participating entities.**

3 (B) NOTIFICATION BY COMMISSIONER.—Not later than December 1 of each calendar  
4 year during which the pilot program is conducted, the Commissioner shall submit to  
5 the districts an estimate of the cost to be incurred by the Bureau of Reclamation under  
6 the pilot program during the following calendar year, if any, including the cost of any  
7 data collection and publication under subsection ~~(f)~~(g).

8 (C) FAILURE TO PAY.—If an amount equal to the amount described in an estimate  
9 under subparagraph (B) is not provided to the Assistant Administrator by the districts  
10 by not later than December 31 of the applicable calendar year—

11 (i) the Assistant Administrator shall have no obligation to conduct any activity  
12 under the pilot program that is otherwise scheduled to be carried out by the  
13 Assistant Administrator; and

14 (ii) the districts shall be prohibited from conducting any activity under the pilot  
15 program until the date on which full payment is made by the districts.

16 (2) ACCOUNTING.—

17 (A) IN GENERAL.—Not later than September 1 of each calendar year during which  
18 the pilot program is conducted, the Assistant Administrator shall provide to the  
19 ~~districts~~ **participating entities** an accounting of the expenses of the Assistant  
20 Administrator under the pilot program during the preceding calendar year.

21 (B) ESTIMATE DISCREPANCIES.—

22 (i) SHORTFALL.—If the estimated amount paid by the districts under paragraph  
23 (1) for a calendar year was less than the actual costs incurred by the Assistant  
24 ~~Administrator,~~ **Administrator—**

25 **(I)** the districts shall pay to the Assistant Administrator an amount equal to  
26 the difference by not later than September 30 ~~{of the following calendar~~  
27 ~~year}.~~ **of that calendar year; and**

28 **(II) the Assistant Administrator shall not be required to carry out any**  
29 **activity otherwise scheduled under the pilot program.**

30 (ii) EXCESS.—If the estimated amount paid by the districts under paragraph (1)  
31 for a calendar year was greater than the actual costs incurred by the Assistant  
32 Administrator, a credit shall be provided to the districts, which shall be deducted  
33 from the estimated payment required to be paid by the districts for the following  
34 calendar year.

35 ~~(f)~~(g) Data Reporting and Evaluation.—

36 (1) IN GENERAL.—Not later than the 15th day of each month during which the pilot  
37 program is conducted, the Assistant Administrator shall publish on the website of the  
38 ~~Assistant Administrator~~ **National Marine Fisheries Service** a tabular summary of the raw  
39 data collected under the pilot program during the preceding month.

40 (2) REPORT.—Not later than June 30 of the calendar year following completion of the



1 pilot program, the Assistant Administrator and the districts shall jointly ~~publish a~~  
2 ~~peer reviewed report~~ **submit a report for peer review** that—

3 (A) discusses the findings and conclusions of the pilot program;

4 (B) synthesizes the data described in paragraph (1); and

5 (C) makes recommendations for additional studies and activities ~~relating to the pilot~~  
6 ~~program.~~

7 ~~(g)~~**(h)** Permit Process.—

8 (1) IN GENERAL.—Not later than 1 year after the date of filing of an application by the  
9 Assistant Administrator and the districts, the Secretary of the Interior, the Secretary of  
10 Commerce, or both, as applicable, shall issue all necessary scientific research and species  
11 enhancement permits under section 10(a)(1) of the Endangered Species Act (16 U.S.C.  
12 1539(a)(1)) for the performance of the pilot program.

13 (2) NAMED PARTIES.—Each permit under paragraph (1) shall be issued in the name of the  
14 Assistant Administrator and the **participating** districts.

15 (3) PRIVATE CONTRACTORS.—The districts may delegate the authority under this  
16 subsection to any qualified private contractor retained in accordance with subsection  
17 ~~(d)(1)(B)~~**(e)(1)(B)**.

18 ~~(h)~~**(i)** Emergency Environmental Reviews.—To expedite the **environmentally beneficial** pilot  
19 program ~~with respect to~~ **established under this section for** the conservation of threatened and  
20 endangered species, the Secretary of the Interior shall consult with the Director of the Council on  
21 Environmental Quality in accordance with section 1506.11 of title 40, Code of Federal  
22 Regulations (or a successor regulation), to develop alternative arrangements to achieve  
23 compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) for  
24 purposes of this section.

25 ~~(i)~~**(j)** Sunset.—The authorities provided by this section shall expire on the date that is 7 years  
26 after the date of commencement of the pilot program.

## 27 **SEC. 205. CALFED INVASIVE SPECIES PILOT PROJECTS** 28 **IN THE SACRAMENTO-SAN JOAQUIN BAY DELTA AND** 29 **ITS TRIBUTARIES.**

30 (a) Findings.—Congress finds the following:

31 (1) The Sacramento-San Joaquin Bay Delta and its tributaries—

32 (A) is 1 of the largest and most diverse estuaries in the United States;

33 (B) is a natural treasure and a vital link in the water system of California;

34 (C) has native biodiversity important to the ecological and economic systems of  
35 California, including water deliveries to agriculture, municipalities, and the  
36 environment and fisheries industries; and

37 (D) has river tributaries important for rearing of salmon and steelhead smolts, which  
38 experience a high level of predation from nonnative species.

(2) Past, present, and future introductions of invasive species are and will be a major factor in the decline of native pelagic and anadromous endangered or threatened species in the Sacramento-San Joaquin Bay Delta and its tributaries.

(3) More than 250 nonnative aquatic and plant species have been introduced into the Delta and its tributaries, of which at least 185 species have become established and have altered the ecosystem of the Sacramento-San Joaquin Bay Delta watershed.

(4) The Bay Delta Conservation Plan, the Recovery Plan for the Evolutionary Significant Units of Sacramento River Winter-run Chinook Salmon and Central Valley Spring-run Chinook Salmon and the Distinct Population Segment of the Central Valley Steelhead, the Recovery Plan for the Sacramento-San Joaquin Delta Native Fishes, and the multiple 5-year reviews of those plans all highlight that introduced nonnative invasive species are a significant factor in the decline of native fish species.

(5) Those nonnative species, which include invasive aquatic vegetation, predators, and competitors, directly or indirectly cause biological stress for pelagic and anadromous endangered or threatened fish species in the Sacramento-San Joaquin Bay Delta and its tributaries.

(6) If threats by nonnative species to native fish species are not addressed, there is a high probability that native species of the pelagic and anadromous community of the Sacramento-San Joaquin Bay Delta watershed will go extinct.

(7) The Calfed Bay-Delta Authorization Act (title I of Public Law 108–361; 118 Stat. 1681) authorized a program to prevent, control, and eradicate invasive species, but as of the date of enactment of this Act, the program has not been implemented.

(8) A focused pilot program needs to be conducted within the Delta and river tributaries to reduce threats to native listed species by nonnative species.

(9) Reducing nonnative stressors on native listed species will contribute to both native listed species recovery and lowering the impact on downstream water users as those native listed species recover.

(b) Pilot Projects to Implement Calfed Invasive Species Program.—

(1) IN GENERAL.—Not later than January 1, 2016, the Secretary of the Interior, in collaboration with the Secretary of Commerce and the Director of the California Department of Fish and Wildlife, shall begin pilot projects to implement the invasive species program, including prevention, control, and eradication activities, as authorized under section 103(d)(6)(A)(iv) of the Calfed Bay-Delta Authorization Act (118 Stat. 1690; Public Law 108–361).

(2) REQUIREMENTS.—The pilot projects shall—

(A) seek to reduce invasive aquatic vegetation, predators, and other competitors that are major factors in the decline of native listed pelagic and anadromous species that occupy the Sacramento and San Joaquin Rivers and their tributaries and the Sacramento-San Joaquin Bay-Delta; and

(B) address how to remove, reduce, or control the effects of species including Asiatic clams, silversides, gobies, Brazilian water weed, largemouth bass, smallmouth

bass, striped bass, crappie, bluegill, white and channel catfish, and brown bullheads.

(3) PHASES.—The activities of the Secretary of the Interior under this subsection shall consist of the **following** phases ~~described in this paragraph~~:

(A) PHASE 1.—The Secretary of the Interior shall convene a panel of experts, including experts recommended by the State—

(i) to identify the nonnative species having the greatest impact on the viability of native pelagic and anadromous native listed species;

(ii) to identify the nonnative species for which actions to reduce or control the population is determined to be possible; and

(iii) to design a study to reduce the nonnative species identified in clauses (i) and (ii) and prepare a cost estimate to implement this study.

(B) PHASE 2.—The Secretary of the Interior shall test the general viability of nonnative reduction methods, including either direct predator removal or alteration of channel conditions, or a combination of those methods, through pilot projects at multiple sites in addition to the projects on the Stanislaus River pursuant to section 204, including known hotspots of predator aggregation or activity, such as—

(i) Clifton Court Forebay;

(ii) Central Valley Project intakes;

(iii) Head of Old River;

(iv) Georgiana Slough;

(v) Old and Middle Rivers;

(vi) Franks Tract;

(vii) Paintersville Bridge;

(viii) individual river tributaries important for wild populations of anadromous species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(ix) human-made submerged structures; and

(x) salvage release sites.

(C) PHASE 3.—If feasible, the Secretary of the Interior shall implement nonnative reduction methods at a larger number of sites, incorporating information learned during the first and second phases.

(4) DATA COLLECTION.—The Secretary of the Interior shall collect data associated with the implementation of the projects described in this subsection, and shall specifically collect data on the impact on—

(A) pelagic and anadromous species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(B) water quality; and

(C) water supply.

(5) REVISIONS.—After assessing the data collected ~~under~~ **as** described in paragraph (4), the Secretary of the Interior, in collaboration with the Secretary **of Commerce** and the Director of the California Department of Fish and Wildlife, shall, if appropriate, annually recommend revisions to the reasonable and prudent alternatives contained in the salmonid biological opinion and the **smelt** biological opinion ~~issued by the United States Fish and Wildlife Service on December 15, 2008,~~ or other administrative Federal requirements governing the operation of the Central Valley Project and the State Water Project, that are likely to produce additional fishery, water quality, and water supply benefits.

(c) Implementation.—The Secretary of the Interior shall implement the Calfed program described in subsection (b) for at least a period of 7 consecutive years beginning on the date of implementation.

(d) Reporting Requirements.—The Secretary of the Interior shall provide to the Committee on Environment and Public Works of the Senate and the Committee on Natural Resources of the House of Representatives—

(1) not later than January 1, 2016, a report containing a description of the projects described in subsection (b), including the application for all necessary scientific research and species enhancement permits under section 10(a)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)), and for the performance of the Calfed invasive species program;

(2) on the completion of Phase 1 as described in subsection (b)(3)(A), a report describing the implementation and cost effectiveness of that phase;

(3) not later than 2 years after the project under this subsection begins, a report describing—

(A) the progress of the eradication of the nonnative species in the ~~Sacramento-San Joaquin~~ Bay Delta and its tributaries;

(B) how those efforts have helped the Recovery Plans for endangered and threatened anadromous and pelagic species in the ~~San Joaquin-Sacramento~~ Bay Delta watershed; and

(C) the associated cost effectiveness of each control measure; and

(4) after the pilot projects are complete, a report describing the results of the program, including recommendations on whether the program should be continued, how the program may be taken to full scale in the most cost-effective manner, and how a mitigation program for the Central Valley Project allowable under section 10(a)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)) could be implemented.

(e) Emergency Environmental Reviews.—To expedite the environmentally beneficial program for the conservation of threatened and endangered species carried out under this section, the Secretary of the Interior shall consult with the Council on Environmental Quality in accordance with section 1506.11 of title 40, Code of Federal Regulations (including successor regulations) to develop alternative arrangements for the program to comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

## SEC. 206. MARK FISHERY AND HARVEST MANAGEMENT.

(a) In General.—To minimize the impact of harvest and project operations on salmonids, contribute to recovery of stocks of endangered or threatened species, **improve management of fish stocks of both hatchery and natural origins**, and to minimize risk of a natural origin fall Chinook listing under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), not later than 2015, ~~the Director shall implement a mass marking program for Central Valley hatchery fall Chinook~~ **60 days after the date of enactment of this Act, the Assistant Administrator**, in partnership with the Director of the California Department of Fish and Wildlife and persons responsible for funding Central Valley hatcheries, **shall convene an independent science panel to follow up on the 2012 recommendations of the California Hatchery Scientific Review Group by providing an assessment of costs and benefits associated with marking, with tagging, and with a program that combines marking and tagging Central Valley hatchery produced fall Chinook.**

~~(b) Harvest Management Strategies.~~ **(b) Administration.**—The Assistant Administrator shall ensure that the independent science panel—

~~(1) In general.~~ **(1) includes an appropriate number of scientific experts as determined and appointed by the Assistant Administrator, and an equal number of scientific experts selected by entities responsible for funding California salmon mitigation hatcheries;**

**(2) considers and gives equal weight to both inland and ocean monitoring and management needs, including harvest; and**

**(3) completes the review by December 31, 2015.**

**(c) Implementation.**—Not later than October 1, 2018, the ~~Director~~ **Assistant Administrator** shall assess and implement ~~new~~ harvest management strategies to provide better protection for sensitive Chinook stocks while still allowing for harvest of hatchery fall Chinook.

~~**(2) Inclusions.**—Alternative harvest strategies assessed shall include stock specific quotas, daily landing limits, terminal fisheries, and mark selective fisheries, all of which methods are standard practice for Chinook harvest management in Oregon and Washington.~~

## SEC. 207. NEW ACTIONS TO BENEFIT CENTRAL VALLEY SALMONIDS.

Not later than March 1, 2016, under similar terms and conditions as successful United States Fish and Wildlife Service programs on Clear Creek and Battle Creek, the Director, in collaboration with the Director of the California Department of Fish and Wildlife, the Commissioner of the Bureau of Reclamation, or both, shall issue necessary permits and otherwise facilitate the deployment of temporary in-river structures—

(1) to protect and grow natural origin spring Chinook populations by blocking access to hatchery origin fall Chinook; and

(2) to prevent hatchery origin Chinook salmon and steelhead from reaching spawning grounds where the species will compete for spawning with natural origin fish listed under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

## TITLE III—OPERATIONAL FLEXIBILITY AND DROUGHT RELIEF

### SEC. 301. FINDINGS.

~~Congress finds the following:~~ **Based on the congressional findings in section 2, Congress finds that it is appropriate and necessary for Federal agencies to exercise the maximum amount of flexibility provided to the agencies under applicable laws (including regulations) to maximize delivery of water supplies while providing the same or better levels of protection for species as in effect on the date of enactment of this Act.**

~~\* 1 (1) As established in the Proclamation of a State of Emergency issued by the Governor of the State on January 17, 2014, the State is experiencing record dry conditions.~~

~~\* 2 (2) Extremely dry conditions have persisted in the State since 2012, and the drought conditions are likely to persist into the future.~~

~~(3) The water supplies of the State are at record low levels, as indicated by—~~

~~(A) a statewide average snowpack of 12 percent of the normal average for winter as of February 1, 2014; and~~

~~(B) the fact that all major Central Valley Project reservoir levels were at levels equal to or less than 50 percent of the capacity of the reservoirs as of April 1, 2014.~~

~~\* 3 (4) The drought of 2013 through 2014 constitutes a serious~~



~~emergency that poses immediate and severe risks to human life and safety and to the environment throughout the State.~~

~~(5) The serious emergency described in paragraph (4) requires—~~

~~\* 4 (A) immediate and credible action that respects the complexity of the water system of the State and the importance of the water system to the entire State; and~~

~~\* 5 (B) policies that do not pit stakeholders against one another, which history shows only leads to costly litigation that benefits no one and prevents any real solutions.~~

~~\* 6 (6) Federal law (including regulations) directly authorizes expedited decisionmaking procedures and environmental and public review procedures to enable timely and appropriate implementation of actions to respond to the type and severity of the serious emergency described in paragraph (4).~~

~~\* 7 (7) The serious emergency described in paragraph (4) fully satisfies the conditions necessary for the exercise of emergency decisionmaking, analytical, and public review requirements under—~~

~~(A) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);~~

~~(B) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);~~

~~\* 8 (C) water control management procedures of the Corps of Engineers described in section 222.5 of title 33, Code of Federal Regulations (including successor regulations); and~~

~~\* 9 (D) the Reclamation States Emergency Drought Relief Act of 1991 (Public Law 102250; 106 Stat. 53).~~

## SEC. 302. DEFINITIONS.

In this title:

(1) CENTRAL VALLEY PROJECT.—The term “Central Valley Project” has the meaning given the term in section 3403 of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4707).

(2) KLAMATH PROJECT.—The term “Klamath Project” means the Bureau of Reclamation project in the States of California and Oregon, as authorized under the Act of June 17, 1902 (32 Stat. 388, chapter 1093).

(3) RECLAMATION PROJECT.—The term “Reclamation Project” means a project constructed pursuant to the authorities of the reclamation laws and whose facilities are wholly or partially located in the State.

(4) SECRETARIES.—The term “Secretaries” means—

(A) the Administrator of the Environmental Protection Agency;

(B) the Secretary of Agriculture;

(C) the Secretary of Commerce; and

(D) the Secretary of the Interior.

~~\* 13 (5) State water project.—The term “State Water Project” means the water project described by California Water Code section 11550 et seq., and operated by the California Department of Water Resources.~~

## SEC. 303. OPERATIONAL FLEXIBILITY IN TIMES OF DROUGHT.

(a) Water Supplies.—

(1) IN GENERAL.—In response to a declaration of a state of drought emergency by the Governor of California and for the period of time such a drought declaration remains in



effect, the Secretaries shall provide the maximum quantity of water supplies practicable to Central Valley Project agricultural, municipal and industrial, and refuge service and repayment contractors, State Water Project contractors, and any other **Indian tribe**, locality, or municipality in the State, by approving, consistent with applicable laws (including regulations), projects and operations to provide additional water supplies as quickly as practicable based on available information to address the emergency conditions.

(2) APPLICATION.—Paragraph (1) applies to projects or operations involving the Klamath Project if the projects or operations would benefit Federal water contractors in the State.

(b) Administration.—In carrying out subsection (a), the Secretaries shall, consistent with applicable laws (including regulations)—

(1) issue all necessary permit decisions under the authority of the Secretaries not later than 30 days after the date on which the Secretaries receive a completed application from the State to place and use temporary barriers or operable gates in Delta channels to improve water quantity and quality for the State Water Project and the Central Valley Project south of Delta water contractors and other water users, on the condition that the barriers or operable gates—

(A) provide benefits for species protection and in-Delta water user water quality; and

(B) are designed so that formal consultations under section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) are not necessary;

(2) require the Director of the United States Fish and Wildlife Service and the Commissioner of Reclamation—

(A) to complete, not later than 30 days after the date on which the Director or the Commissioner receives a **complete written request for** water transfer ~~request~~ associated with voluntarily fallowing nonpermanent crops in the State, all requirements under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) necessary to make final permit decisions on the request; and

(B) to grant any water transfer request described in subparagraph (A) to maximize the quantity of water supplies available for nonhabitat uses, on the condition that the fallowing and associated water transfer are in compliance with applicable Federal laws (including regulations);

(3) adopt a 1:1 inflow to export ratio for the increment of increased flow of the San Joaquin River, as measured as a 3-day running average at Vernalis during the period beginning on April 1, and ending on May 31, resulting from voluntary transfers and exchanges of water supplies, on the condition that a proposed transfer or exchange under this paragraph may only proceed if the Secretary of the Interior determines ~~that that~~—

(A) the environmental effects of the proposed transfer or exchange are consistent with effects permissible under applicable law (including regulations); and

(B) **Delta conditions are suitable to allow movement of the transfer water through the Delta consistent with the permitted rights of the Commissioner of Reclamation; and**

(4) **provide additional priority for eligible WaterSMART projects that address drought conditions, including projects**~~(4) make any WaterSMART grant funding allocated to the State available on a priority and expedited basis for projects in the State that—~~

(A) provide emergency drinking and municipal water supplies to localities in a quantity necessary to meet minimum public health and safety needs;

(B) prevent the loss of permanent crops;

(C) minimize economic losses resulting from drought conditions; or

(D) provide innovative water conservation tools and technology for agriculture and urban water use that can have immediate water supply benefits.

(c) Accelerated Project Decision and Elevation.—

(1) IN GENERAL.—On request by the **Governor of the State**, the heads of Federal agencies shall use the expedited procedures under this subsection to make final decisions relating to a Federal project or operation ~~to provide additional water supplies or address if~~ **the purpose of the project or operation is to provide relief for** emergency drought conditions pursuant to subsections (a) and (b).

(2) REQUEST FOR RESOLUTION.—

(A) IN GENERAL.—On request by the **Governor of the State**, the head of a Federal agency ~~described~~ **referenced** in [paragraph (1)], or the head of another Federal agency responsible for carrying out a review of a project, as applicable, the Secretary of the Interior shall convene a final project decision meeting with the heads of all relevant Federal agencies to decide whether to approve a project to provide **relief for** emergency ~~water supplies~~ **drought conditions**.

(B) MEETING.—The Secretary of the Interior shall convene a meeting requested under subparagraph (A) not later than 7 days after the date on which the meeting request is received.

(3) NOTIFICATION.—On receipt of a request for a meeting under paragraph (2), the Secretary of the Interior shall notify the heads of all relevant Federal agencies of the request, including information on the project to be reviewed and the date of the meeting.

(4) DECISION.—Not later than 10 days after the date on which a meeting is requested under paragraph (2) **and subject to subsection (e)(2)**, the head of the relevant Federal agency shall issue a final decision on the project.

(5) MEETING CONVENED BY SECRETARY.—The Secretary of the Interior may convene a final project decision meeting under this subsection at any time, at the discretion of the Secretary, regardless of whether a meeting is requested under paragraph (2).

(d) Application.—To the extent that a Federal agency, other than the agencies headed by the Secretaries, has a role in approving projects described in subsections (a) and (b), this section shall apply to those Federal agencies.

(e) Limitation.—Nothing in this section authorizes the heads of applicable Federal agencies to approve projects—

(1) that would otherwise require congressional authorization; or

(2) without following procedures required by applicable law.

**(f) 2015 Drought Plan.—The Secretary of Commerce and the Secretary of the Interior, in consultation with appropriate State officials, shall develop a drought operations plan for calendar year 2015 that is consistent with this section and other provisions of this Act intended to provide additional water supplies that could be of assistance during the drought in effect as of the date of enactment of this Act.**

## **SEC. 304. OPERATION OF CROSS-CHANNEL GATES.**

**(a) In General.—The Secretary of Commerce and the Secretary of the Interior shall jointly—**

(1) authorize and implement activities to ensure that the Delta Cross Channel Gates remain open to the maximum extent practicable using findings from the United States Geological Survey on diurnal behavior of ~~juvinal~~ **juvenile** salmonids, timed to maximize the peak flood tide period and provide water supply and water quality benefits for the duration of the drought emergency declaration of the State, consistent with operational criteria and monitoring criteria developed pursuant to the Order Approving a Temporary Urgency Change in License and Permit Terms in Response to Drought Conditions of the California State Water Resources Control Board, effective January 31, 2014 (or a successor order) **and other authorizations associated with that order;**

(2) with respect to the operation of the Delta Cross Channel Gates described in paragraph (1), collect data on the impact of that operation on—

(A) species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(B) water quality; and

(C) water supply;

(3) consistent with knowledge gained from activities carried out during 2014, collaborate with the California Department of Water Resources to install a deflection barrier at Georgiana Slough in coordination with Delta Cross Channel Gate diurnal operations to protect migrating salmonids;

(4) evaluate the combined salmonid survival in light of activities carried out pursuant to paragraphs (1) through (3) in deciding how to operate the Delta Cross Channel gates to enhance salmonid survival and water supply benefits; and

(5) not later than May 15, 2015, submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives a written report on the extent to which the gates are able to remain open.

**(b) ~~Recommendations.~~—After Recommendations.—**

**(1) IN GENERAL.—After** assessing the information collected under subsection (a), the Secretary {of the Interior } shall recommend revisions to the operation of the Delta Cross-Channel Gates, to the Central Valley Project, and to the State Water Project, including, if appropriate, any reasonable and prudent alternatives contained in the biological opinion issued by the National Marine Fisheries Service on June 4, 2009, that are likely to

1 produce fishery, water quality, and water supply benefits.

2 (2) COORDINATION.—The Secretary of the Interior shall coordinate with the State  
3 Water Resources Control Board to seek consistent direction for the operation of the  
4 Delta Cross-Channel Gates under Federal and State law, including Water Right  
5 Decision 1641.

## 6 SEC. 305. FLEXIBILITY FOR EXPORT/INFLOW RATIO.

7 In response to the declaration of a state of drought emergency by the Governor of ~~California~~  
8 ~~the State~~ and for the period of time such a drought declaration remains in effect, ~~consistent with~~  
9 ~~the Central Valley Project and State Water Project Drought Operations Plan and Operational~~  
10 ~~Forecast~~, the Commissioner of the Bureau of Reclamation shall continue to vary the averaging  
11 period of the Delta Export/Inflow ratio pursuant to the California State Water Resources Control  
12 Board decision D1641, approved in the March 2014 Temporary Urgency Change Order—

13 (1) to operate to a 35 percent Export/Inflow ratio with a 3 day averaging period on the  
14 rising limb of a Delta inflow hydrograph; and

15 (2) to operate to a 14 day averaging period on the falling limb of the Delta inflow  
16 hydrograph.

## 17 SEC. 306. EMERGENCY ENVIRONMENTAL REVIEWS.

18 To minimize the time spent carrying out environmental reviews and to deliver water quickly  
19 that is needed to address emergency drought conditions in the State during the duration of an  
20 emergency drought declaration, the head of each applicable Federal agency shall, in carrying out  
21 this Act, consult with the Council on Environmental Quality in accordance with section 1506.11  
22 of title 40, Code of Federal Regulations (including successor regulations), to develop alternative  
23 arrangements to comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et  
24 seq.) during the emergency.

## 25 SEC. 307. PRIORITIZING STATE REVOLVING FUNDS 26 DURING DROUGHTS.

27 (a) In General.—This section shall apply for each of the fiscal years during which an  
28 emergency drought declaration of the State is in effect.

29 (b) Action by Administrator.—The Administrator of the Environmental Protection Agency, in  
30 implementing the processes and programs under the State water pollution control revolving  
31 funds established under title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et  
32 seq.) and the State drinking water treatment revolving loan funds established under section 1452  
33 of the Safe Drinking Water Act (42 U.S.C. 300j–12), shall, for those projects that are eligible to  
34 receive assistance under section 603 of the Federal Water Pollution Control Act (33 U.S.C.  
35 1383) or section 1452(a)(2) of the Safe Drinking Water Act (42 U.S.C. 300j–12(a)(2))—

36 (1) issue a determination of waivers within 30 days of the conclusion of the informal  
37 public comment period pursuant to section 436(c) of title IV of division G of Public Law  
38 113–76; and

39 (2) authorize, at the request of the State, 40-year financing for assistance under section

603(d)(2) of the Federal Water Pollution Control Act (33 U.S.C. 1383(d)(2)) or section 1452(f)(2) of the Safe Drinking Water Act (42 U.S.C. 300j-12(f)(2)).

(c) Effect of Section.—Nothing in this section authorizes the Administrator of the Environmental Protection Agency to modify any funding allocation, funding criteria, or other requirement relating to State water pollution control revolving funds established under title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) and the State drinking water treatment revolving loan funds established under section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12) for any other State.

## SEC. 308. INCREASED FLEXIBILITY FOR REGULAR PROJECT OPERATIONS.

The Secretaries shall, consistent with applicable laws (including regulations)—

(1) to the maximum extent practicable, based on the availability of water and without causing land subsidence or violating water quality standards—

(A) help meet the contract water supply needs of Central Valley Project refuges through the improvement or installation of water conservation measures, water conveyance facilities, and wells to use groundwater resources, on the condition that those activities may only be accomplished by using funding made available under the Water Assistance Program or the WaterSMART program of the Department of the Interior; and

(B) make available to Central Valley Project contractors a quantity of Central Valley Project surface water obtained from the activities carried out under subparagraph (A);

(2) **contingent on funding**, in coordination with the Secretary of Agriculture, enter into an agreement with the National Academy of Sciences to conduct a comprehensive study, to be completed not later than 1 year after the date of enactment of this Act, on the effectiveness and environmental impacts of saltcedar biological control efforts on increasing water supplies and improving riparian habitats of the Colorado River and its principal tributaries, in the State and elsewhere;

(3) in coordination with the California Department of Water Resources and the California Department of Fish and Wildlife, implement offsite upstream projects in the Delta and upstream Sacramento River and San Joaquin basins that offset the effects on species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) due to activities carried out pursuant this Act, {as determined by the Secretaries};

(4) manage reverse flow in the Old and Middle Rivers, as prescribed by the ~~biological opinions issued by the United States Fish and Wildlife Service on December 15, 2008, for Delta smelt and by the National Marine Fisheries Service on June 4, 2009, for salmonids~~ **smelt biological opinion and salmonid biological opinion**, or any successor biological opinions, to minimize water supply reductions for the Central Valley Project and the State **Water** Project, and issue guidance not later than December 31, 2015, directing the employees of those agencies to take all steps necessary to manage flow in accordance with this paragraph;

(5) as soon as practicable after the date of enactment of this Act and pursuant to existing



1 authority available to the Secretary of the Interior, participate in, issue grants, or otherwise  
2 provide funding for pilot projects to increase water in reservoirs in regional river basins  
3 experiencing extreme, exceptional, or sustained drought that have a direct impact on the  
4 water supply of the State, including the Colorado River Basin, on the condition that any  
5 participation, grant, or funding by the Secretary of the Interior with respect to the Upper  
6 Division shall be with or to the respective State; and

7 (6) use all available scientific tools to identify any changes to real-time operations of the  
8 Bureau of Reclamation, State, and local water projects that could result in the availability of  
9 additional water supplies.

10 **SEC. 309. TEMPORARY OPERATIONAL FLEXIBILITY**  
11 **FOR FIRST FEW STORMS OF ~~2014~~2015 2015 WATER**  
12 **YEAR.**

13 (a) Findings.—Congress finds the following:

14 (1) During the 2014 water year, operations of the Central Valley Project and the State  
15 Water Project ~~caused zero take of Delta smelt, and only [ ] take of salmonids, which is~~  
16 ~~only [ ], the incidental take of—~~

17 (A) **adult Delta smelt was zero;**

18 (B) **juvenile Delta smelt was 78 (7.7 percent of the incidental take level for**  
19 **salmonids. limit);**

20 (2) ~~Despite the absence of any take of smelt and the very low levels of take of~~  
21 ~~salmon, during and after storm events in the 2014 water year, the~~(C) **winter run**  
22 **Chinook was 339 (1.4 percent of the incidental take limit);**

23 (D) **spring run Chinook was zero; and**

24 (E) **steelhead was 261 (8.7 percent of the incidental take limit).**

25 (2) ~~The Central Valley Project and State Water Project never exceeded a combined~~  
26 ~~pumping capacity of [ ]~~ **exceeded an Old and Middle River flow of ^5,000 cubic feet**  
27 **per second over a 14-day average for brief periods after 3-storm events in February and**  
28 **March 2014 as a result of increased pumping, but did not cause substantially**  
29 **increased take of smelt or salmon.**

30 (3)–

31 (3) ~~As described in section [ ], the most recent scientific studies as of the date of~~  
32 ~~enactment of this Act have not shown a substantiated connection between water pumping~~  
33 ~~and salmon survival rates.~~

34 (4) Hydrological conditions in dry years, such as the 2014 water year, have not triggered  
35 water pumping restrictions pursuant to the ~~2008~~ smelt biological opinion.

36 (5)(4) The Secretaries should be allowed more flexibility to increase pumping levels  
37 without causing [harm?] ~~for fish and other endangered Species~~ **significant risk to the listed**  
38 **species** or weakening other environmental protections.

~~(6)~~(5) Given the severe drought conditions in the State, significant groundwater withdrawals for irrigation due to lack of surface water supplies, and the depletion of water supplies in reservoirs, it is imperative that the Secretaries exercise the flexibility provided in this section to capture the maximum quantity of storm flows ~~if~~ **when** storm flows occur in the ~~2014~~2015 water year, **2015 water year, and provide for the diversion of those water supplies to the Central Valley Project and State Water Project** so that agricultural operations, businesses, and homes in ~~the areas with the most severe drought risks~~ **drought-stricken areas** will have an opportunity to bolster meager supplies of water when water is available.

~~(b) Goal.—To the maximum extent practicable consistent with avoiding jeopardy~~  
**Goal.—Consistent with avoiding additional adverse effects on listed fish species beyond the range of adverse effects authorized** under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), ~~pursuant to subsection (d) and in accordance with other Federal and State laws (including regulations) as~~ **and other environmental protections** described in subsection (e), the Secretaries shall authorize the Central Valley Project and the State Water Project, ~~combined,~~ to operate at **combined** levels that result in Old and Middle River flows at ~~-up to a ^7500 cubic feet per second for 21 cumulative days of high outflow~~**(based on United States Geological Survey gauges on Old and Middle Rivers) daily average for up to 21 cumulative days** after October 1, 2014, as described in subsection (c).

~~(c) Days of High Outflow.—The days of high outflow referred to~~ **Temporary Operational Flexibility.—The temporary operational flexibility described** in subsection (b) shall ~~constitute~~ **be authorized on** days that the California Department of Water Resources determines the daily average river flow of the Sacramento River is at, or above, 17,000 cubic feet per second, as measured at the Sacramento River at Freeport gauge maintained by the United States ~~Geologic Survey.~~ **Geological Survey.**

~~(d) Avoiding Jeopardy.—In~~**(d) Compliance With Endangered Species Act Authorizations.—In** carrying out this section, the Secretaries may continue to impose any requirements under the biological opinions during any period of **temporary operational flexibility as the Secretaries determine are reasonably necessary to avoid additional adverse effects on listed fish species beyond the range of adverse effects authorized under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).** ~~high outflow if the Secretaries—~~

~~(1) demonstrate, including an explanation of the data examined and the connection between those data and the choice made, why the requirements are necessary in the short term to avoid jeopardy after considering other alternatives, if any, that may have a lesser water supply impact; and~~

~~(2) give great weight in any analysis of potential jeopardy to whether incidental take levels in the applicable biological opinions are likely to be exceeded by the proposed action or are on track to being exceeded by the proposed action and other actions.~~

**(e) Other Environmental Protections.—**

**(1) IN GENERAL.—**The actions of the Secretaries under this section shall be consistent with applicable regulatory requirements under State law, including State Water Resources Control Board Decision 1641~~6~~, as that decision may be implemented in any given year ~~are met.~~

(2)(2) ADJUSTED RATES ALLOWED.—During the first flush of sediment out of the Delta during the 2015 water year, Old and Middle River flow may be managed at rates less negative than ^5000 cubic feet per second for a minimum duration to avoid movement of adult Delta smelt to areas in the southern Delta that would be likely to increase entrainment at Central Valley Project and State Water Project pumping plants.

(3) SALMONID BIOLOGICAL OPINION.—This section ~~does~~ **shall** not have any effect on the applicable requirements of the salmonid biological opinion during the period beginning on April 1, **2015** and ending May 31, ~~{of each calendar year or of a specific calendar year?}~~ **2015**, unless the Secretary of Commerce finds that some or all of the applicable requirements may be ~~relaxed~~ **adjusted** during the time period to provide emergency water supply relief without ~~causing jeopardy~~. **resulting in additional adverse effects beyond the adverse effects authorized under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.)**.

~~(3)~~(4) MONITORING AND DATA GATHERING.—During the period in which operations are carried out under this section, the Commissioner of Reclamation, in coordination with the Director of the United States Fish and Wildlife Service, the ~~Director~~ **Assistant Administrator** of the National Marine Fisheries Service, and the head of the California Department of Fish and Wildlife, shall undertake a monitoring program and other data gathering to ensure take limits levels are not exceeded, and to identify potential actions **necessary** to mitigate any impacts **of the temporary operational flexibility** to species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

~~(4)~~(5) MITIGATING IMPACTS.—The Commissioner of Reclamation may take any action, including the transfer of appropriated funds between accounts that, in the judgment of the Commissioner, is necessary to mitigate the impacts of the operations carried out under this section, on the condition that the mitigation is consistent with the requirements of this section.

(f) Technical Adjustments to Target Period.—If, before ~~the goal~~ **temporary operational flexibility has been implemented on 21 cumulative days** as described in subsection (b) ~~is met~~, the Secretaries operate the Central Valley Project and the State Water Project combined at levels that result in Old and Middle River flows less negative than -^7500 cubic feet per second during days of high outflow ~~(as described~~ **temporary operational flexibility as defined** in subsection (c)), the duration of the operation shall not be counted toward the 21 cumulative days specified in subsection (b).

~~(g) Effect on Running Averages.—For the purpose of carrying out subsection (b), the periods during which the combined operations of Central Valley Project and the State Water Project result in Old and Middle River flows more negative than -5000 cubic feet per second, and~~  
**Emergency Consultation; Effect on Running Averages.—**

(1) IN GENERAL.—If necessary to implement this section, the Commissioner of Reclamation shall use the emergency consultation procedures under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) (including the implementing regulations at section 402.05 of title 50, Code of Federal Regulations (or successor regulations)) to temporarily adjust the operating criteria under the biological opinions, solely for the



**21 days of temporary operational flexibility and—**

**(A) not more than necessary to achieve the purposes of this section consistent with the environmental protections described in subsections (d) and (e); and**

**(B) including, as appropriate, adjustments to ensure that** the actual flow rates during ~~these periods, shall not be counted~~ **the periods of temporary operational flexibility do not count** toward the 5-day and 14-day running averages of tidally filtered daily Old and Middle River flow requirements under the biological opinions.

**(2) PROHIBITION.—Following the conclusion of the 21 days of temporary operational flexibility, the Commissioner of Reclamation shall not reinitiate consultation on the adjusted operations described in paragraph (1) if the effects on listed fish species of the operations under this section remain within the range of the effects authorized under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).**

(h) Level of Detail Required for Analysis.—In articulating the determinations required under this section, the Secretaries shall fully satisfy the requirements of this section but shall not be expected to provide a greater level of supporting detail for the analysis than feasible to provide within the short timeframe permitted for timely decisionmaking in response to changing conditions in the Delta.

(i) Duration.—The authority to carry out this section shall expire on September 30, 2015.

## **SEC. 310. EXPEDITING WATER TRANSFERS.**

(a) In General.—Section 3405(a) of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4709(a)) is amended—

(1) by redesignating paragraphs (1) through (3) as paragraphs (4) through (6), respectively;

(2) in the matter preceding paragraph (4) (as so designated)—

(A) in the first sentence, by striking “In order to” and inserting the following:

“(1) IN GENERAL.—In order to”; and

(B) in the second sentence, by striking “Except as provided herein” and inserting the following:

“(3) TERMS.—Except as otherwise provided in this section”; and

(3) by inserting before paragraph (3) (as so designated) the following:

“(2) EXPEDITED TRANSFER OF WATER.—The Secretary shall take all necessary actions to facilitate and expedite transfers of Central Valley Project water in accordance with—

“(A) this Act;

“(B) any other applicable provision of the reclamation laws; and

“(C) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).”;

(4) in paragraph (4) (as so designated)—

(A) in subparagraph (A), by striking “to combination” and inserting “or

combination”; and

(B) by striking “3405(a)(2) of this title” each place it appears and inserting “(5)”;  
(5) in paragraph (5) (as so designated), by adding at the end the following:

“(E) The contracting district from which the water is coming, the agency, or the Secretary shall determine if a written transfer proposal is complete within 45 days after the date of submission of the proposal. If the contracting district or agency or the Secretary determines that the proposal is incomplete, the district or agency or the Secretary shall state with specificity what must be added to or revised for the proposal to be complete.”; and

(6) in paragraph (6) (as so designated), by striking “3405(a)(1)(A)-(C), (E), (G), (H), (I), (L), and (M) of this title” and inserting “(A) through (C), (E), (G), (H), (I), (L), and (M) of paragraph (4)”.

(b) Conforming Amendments.—The Central Valley Project Improvement Act (Public Law 102–575) is amended—

(1) in section 3407(c)(1) (106 Stat. 4726), by striking “3405(a)(1)(C)” and inserting “3405(a)(4)(C)”; and

(2) in section 3408(i)(1) (106 Stat. 4729), by striking “3405(a)(1) (A) and (J) of this title” and inserting “subparagraphs (A) and (J) of section 3405(a)(4)”.

## SEC. 311. WARREN ACT CONTRACTS.

[To be supplied.]

## SEC. 312. ADDITIONAL WARREN ACT CONTRACTS.

[To be supplied.]

## TITLE IV—INCREASING WATER STORAGE

### SEC. 401. FINDINGS.

Congress ~~makes the following findings:~~ **finds that—**

~~(1) The~~ **(1) the** record drought conditions being experienced in the State as of the date of enactment of this Act are—

(A) expected to recur in the future; and

(B) likely to do so with increasing frequency;;

(2) ~~Water~~ **water** storage is an indispensable and integral part of any solution to address the long-term water challenges of the State;;

(3) Congress authorized relevant feasibility studies for 4 water storage projects in the State, including projects for—

(A) enlargement of Shasta Dam in Shasta County under section 2(a) of Public Law 96–375 (94 Stat. 1506), as reaffirmed under section 103(d)(1)(A)(i)(I) of the Calfed Bay-Delta Authorization Act (Public Law 108–361; 118 Stat. 1684);

(B) enlargement of Los Vaqueros Reservoir in Contra Costa County under section 215 of Public Law 108–7 (117 Stat. 147), as reaffirmed under section 103(d)(1)(A)(i)(II) of the Calfed Bay-Delta Authorization Act (Public Law 108–361; 118 Stat. 1684);

(C) construction of North-of-Delta Offstream Storage (Sites Reservoir) in Colusa County under section 215 of Public Law 108–7 (117 Stat. 147), as reaffirmed under section 103(d)(1)(A)(ii)(I) of the Calfed Bay-Delta Authorization Act (Public Law 108–361; 118 Stat. 1684); and

(D) construction of the Upper San Joaquin River storage (Temperance Flat) in Fresno and Madera Counties under section 215 of Public Law 108–7 (117 Stat. 147), as reaffirmed under section 103(d)(1)(A)(ii)(II) of the Calfed Bay-Delta Authorization Act (Public Law 108–361; 118 Stat. 1684);;

(4)(A) ~~As~~ **as** of the date of enactment of this Act, it has been more than 10 years since the authorization of the feasibility studies referred to in paragraph (3); but

(B) complete and final feasibility studies have not been prepared for any of those water storage projects;;

(5) ~~As~~ **as** of August 2014, only 2 of the 4 projects referred to in paragraph (3) have completed draft feasibility studies;;

(6) ~~The~~ **the** slow pace of work on completion of the feasibility studies for those 4 water storage projects is—

(A) unjustified; and

(B) of deep concern; **and**—

(7) ~~There~~ **there** is significant public interest in, and urgency with respect to, completing all feasibility studies and environmental reviews for the water storage projects referred to in paragraph (3), given the critical need for that infrastructure to address the water challenges of the State.

## SEC. 402. CALFED STORAGE FEASIBILITY STUDIES.

(a) In General.—Notwithstanding subparagraph (B)(i) of section 103(d)(1) of the Calfed Bay-Delta Authorization Act (Public Law 108–361; 118 Stat. 1684), the Secretary of the Interior, acting through the Commissioner of Reclamation (referred to in this title as the “Secretary”), shall complete a final feasibility study and any other applicable environmental review documents for the project described in—

(1) subparagraph (A)(i)(I) of that section by not later than December 31, 2014; and

(2) subparagraph (A)(ii)(II) of that section by not later than July 31, 2015.

(b) Environmental Reviews.—In carrying out subsection (a), the Secretary—

(1) shall ensure that—

(A) all applicable reviews, including reviews required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), are completed as expeditiously as practicable; and

(B) the shortest applicable process under that Act is used, including in the completion of—

(i) feasibility studies;

(ii) draft environmental impact statements; and

(iii) final environmental impact statements; and

(2) shall not be required to complete a draft or final environmental impact statement if the Commissioner of Reclamation determines, and the Secretary concurs, that the project fails to meet applicable Federal cost-benefit requirements or standards.

(c) Accountability.—

(1) IN GENERAL.—If the Secretary determines that an environmental review document for the water storage projects referred to in section 103(d)(1) of the Calfed Bay-Delta Authorization Act (Public Law 108–361; 118 Stat. 1684) will not be completed according to the schedule specified in subsection (a), not later than 14 days after the determination, the Secretary shall notify the Committee on Energy and Natural Resources and the Subcommittee on Energy and Water Development of the Committee on Appropriations of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives.

(2) INCLUSIONS.—The notification shall include—

(A) an explanation of the delay;

(B) the anticipated length of the delay and the revised completion date; and

(C) the steps that the Secretary will take to mitigate the delay, including, at a minimum, a request to reprogram existing funds appropriated to the Secretary to meet the revised completion deadline.

(d) Requirement.—The Secretary shall carry out the procedures described in subsection (c) for each subsequent delay beyond the revised completion deadline.

## SEC. 403. WATER STORAGE PROJECT CONSTRUCTION.

(a) In General.—The Secretary may partner or enter into an agreement on the water storage projects identified in section 103(d)(1) of the Calfed Bay-Delta Authorization Act (Public Law 108–361; 118 Stat. 1684) **(and Acts supplemental and amendatory to the Act)** with local joint powers ~~and~~ authorities formed pursuant to State law by irrigation districts and other local water districts and local governments within the applicable hydrologic region, to advance those projects.

[(b) Placeholder – authorization issue.]

## SEC. 404. OTHER STORAGE FEASIBILITY STUDIES.

(a) Definition of Qualifying Project.—In this section, the term “qualifying project” means ~~{TO BE SUPPLIED}~~ **any new surface water storage project constructed on land administered by the Department of the Interior in a State in which the Bureau of Reclamation has jurisdiction, but excluding any easement, right-of-way, lease, or private holding located on such land.**

1 (b) Lead Agency.—

2 (1) QUALIFYING PROJECTS WITHIN JURISDICTION OF BUREAU OF RECLAMATION.—The  
3 Bureau of Reclamation shall serve as the lead agency for purposes of coordinating all  
4 reviews, analyses, opinions, statements, permits, licenses, and other approvals or decisions  
5 required under Federal law (including regulations) to construct qualifying projects within  
6 the jurisdiction of the Bureau.

7 (2) QUALIFYING PROJECTS OUTSIDE JURISDICTION OF BUREAU OF RECLAMATION.—If the  
8 site of a qualifying project is not located in a State in which the Bureau of Reclamation has  
9 jurisdiction, the Secretary shall, by not later than 45 days after the date of receipt of an  
10 application for the qualifying project—

11 (A) designate an alternate agency within the Department of the Interior to serve as  
12 the lead agency for purposes of coordinating all reviews, analyses, opinions,  
13 statements, permits, licenses, and other approvals or decisions required under Federal  
14 law (including regulations) to construct the qualifying project; or

15 (B) in consultation with the heads of other Federal departments and agencies,  
16 identify the appropriate lead agency for the qualifying project.

17 (c) Cooperating Agencies.—

18 (1) FEDERAL DEPARTMENTS AND AGENCIES.—The lead agency designated under  
19 paragraph (1) or (2) of subsection (b) shall—

20 (A) as soon as practicable after receipt of an application for a qualifying project,  
21 identify any Federal department or agency that may have jurisdiction over a review,  
22 permit, license, approval, or decision required for the qualifying project under  
23 applicable Federal laws (including regulations); and

24 (B) as soon as practicable after the date of identification under subparagraph (A)—

25 (i) notify each applicable department or agency of the identification; and

26 (ii) designate the department or agency as a cooperating agency, unless the  
27 department or agency—

28 (I) has no jurisdiction or authority with respect to the qualifying project;

29 (II) has no expertise or information relevant to the qualifying project or  
30 any review, permit, license, approval, or decision associated with the  
31 qualifying project; or

32 (III) does not intend—

33 (aa) to submit comments regarding the qualifying project; or

34 (bb) to conduct any review of the qualifying project or make any  
35 decision with respect to the qualifying project in a manner other than in  
36 cooperation with the Bureau of Reclamation.

37 (2) STATES.—A State in which a qualifying project is proposed to be carried out may  
38 elect, consistent with Federal and State law, to participate as a cooperating agency, if the  
39 lead agency designated for the proposed qualifying project under paragraph (1) or (2) of  
40 subsection (b) determines that the applicable agency of the State—

1 (A) has jurisdiction over the qualifying project under applicable Federal or State  
2 law;

3 (B) is required to conduct or issue a review of the qualifying project; and

4 (C) is required to make a determination regarding issuing a permit, license, or  
5 approval of the qualifying project.

6 (d) Duties of Lead Agency.—

7 (1) IN GENERAL.—Not later than 30 days after the date of receipt of an {application for  
8 approval of } a qualifying project, the lead agency shall hold a meeting among the applicant,  
9 the lead agency, and all cooperating agencies to establish, with respect to the qualifying  
10 project, all applicable—

11 (A) requirements;

12 (B) review processes; and

13 (C) stakeholder responsibilities.

14 (2) SCHEDULE.—

15 (A) ESTABLISHMENT.—Not later than 30 days after the date of the meeting under  
16 paragraph (1), the lead agency, in consultation with the attendees of the meeting, shall  
17 establish a schedule for completion of the qualifying project, taking into consideration,  
18 among other relevant factors—

19 (i) the responsibilities of cooperating agencies under applicable laws and  
20 regulations;

21 (ii) the resources available to the cooperating agencies and non-Federal project  
22 stakeholders;

23 (iii) the overall size and complexity of the qualifying project;

24 (iv) the overall schedule for, and cost of, the qualifying project; and

25 (v) the sensitivity of the natural and historic resources that may be affected by  
26 the qualifying project.

27 (B) REQUIREMENTS.—On establishment of a schedule for a qualifying project under  
28 subparagraph (A), the lead and cooperating agencies shall—

29 (i) to the maximum extent practicable, adhere to the schedule; and

30 (ii) submit to the Committee on Environment and Public Works of the Senate  
31 and the Committee on Natural Resources of the House of Representatives on a  
32 semiannual basis a report describing any delays in the schedule, including a  
33 description of—

34 (I) the reasons for the delay;

35 (II) the actions that the lead and cooperating agencies will take to  
36 minimize the delay; and

37 (III) a revised schedule for the qualifying project, if applicable.



(e) Environmental Reviews.—

(1) SINGLE, UNIFIED ENVIRONMENTAL REVIEW DOCUMENT.—

(A) IN GENERAL.—The lead agency with respect to a qualifying project, in consultation with appropriate stakeholders and cooperating agencies, shall determine whether a single, unified environmental review document relating to the qualifying project is sufficient to comply with applicable Federal laws (including regulations), including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(B) ACTION ON DECLINATION.—If, after consultation under subparagraph (A), a lead agency determines not to adopt a single, unified environmental review document relating to a qualifying project—

(i) the lead agency shall—

(I) document the reasons for the determination; and

(II) submit to the Secretary a report describing those reasons; and

(ii) the Secretary may require the adoption of a single, unified document at the discretion of the Secretary, based on good cause.

(2) ENVIRONMENTAL ASSESSMENT.—~~IF ASSESSMENT.~~—**Except as provided in paragraph (4),** if the lead agency with respect to a qualifying project, in consultation with cooperating agencies, determines that an environmental assessment is sufficient to comply with the requirements of this subsection and other applicable Federal laws (including regulations)—

(A) the public comment period for a draft environmental assessment shall be ~~[ ]~~ days **not more than 60 days after the date of publication in the Federal Register of notice of the public issuance of that draft;** and

(B) the lead agency shall issue the final environmental assessment by not later than ~~[ ]~~ **180** days after the end of the period for public comments on the draft environmental assessment.

(3) ENVIRONMENTAL IMPACT STATEMENT.—~~IF STATEMENT.~~—**Except as provided in paragraph (4),** if the lead agency with respect to a qualifying project, in consultation with cooperating agencies, determines that an environmental impact statement is required to comply with the requirements of this subsection and other applicable Federal laws (including regulations)—

(A) the public comment period for a draft environmental impact statement shall be ~~[ ]~~ days **not more than 60 days after the date of publication in the Federal Register of notice of the public issuance of that draft;** and

(B) the lead agency shall issue the final environmental impact statement by not later than ~~[ ]~~ days **1 year** after the end of the period for public comments on the draft environmental assessment.

(4) MODIFICATION OF ~~SCHEDULE.~~—~~IN SCHEDULE.~~—

(A) IN GENERAL.—~~In~~ carrying out paragraphs (2) and ~~(3),~~(3)—

~~(A)~~ the lead agency with respect to a qualifying project, ~~in consultation with the~~

1 ~~cooperating agencies~~, may modify the schedule of the qualifying project for ~~good~~  
2 ~~cause; and if—~~

3 ~~(B) on making a modification under subparagraph (B);~~**(I) the lead agency**  
4 **can demonstrate good cause, such as the need for additional time to comply**  
5 **with other statutory or regulatory requirements (other than the National**  
6 **Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)); and**

7 ~~(II) the head of the lead agency shall submit~~ **submits** to Congress a written  
8 determination describing the cause and reasons for the modification **by not later**  
9 **than 30 days before the original scheduled deadline; or**

10 **(ii) the lead agency, the project sponsor, the joint lead agency (if**  
11 **applicable), and all participating and cooperating agencies agree to the**  
12 **modification.**

13 **(B) LIMITATION.—Unless the requirements of clause (i) or (ii) of subparagraph**  
14 **(A) are met, no modification under subparagraph (A) shall result in the**  
15 **postponement of the issuance of—**

16 **(i) a final environmental assessment by more than 1 year; or**

17 **(ii) a final environmental impact statement by more than 2 years.**

18 **(C) REVISED SCHEDULE.—If a modification is made pursuant to this paragraph,**  
19 **the lead agency shall publish and adhere to the applicable revised schedule,**  
20 **except as provided in clause (i) or (ii) of subparagraph (A).**

21 **(5) REQUIREMENTS.—On commencement of the environmental review process under this**  
22 **subsection, the lead and cooperating agencies shall, as soon as practicable—**

23 **(A) make available to all stakeholders of the qualifying project information**  
24 **regarding—**

25 **(i) the environmental and socioeconomic resources located within the area of**  
26 **the qualifying project; and**

27 **(ii) the general locations of the alternatives under consideration; and**

28 **(B) identify any issues of concern regarding the potential environmental or**  
29 **socioeconomic effects of the qualifying project, including any issues that could**  
30 **substantially delay or prevent an agency from granting a permit or other approval that**  
31 **is needed for a study relating to the qualifying project.**

32 **(f) Concurrent Review Actions.—**

33 **(1) IN GENERAL.—Any review, analysis, permit, license, approval, or decision regarding a**  
34 **qualifying project made by a Federal, State, or local government agency shall be—**

35 **(A) conducted, to the maximum extent practicable, concurrently with any other**  
36 **applicable government agency; and**

37 **(B) incorporated in the schedule for the qualifying project under subsection (d)(2).**

38 **(2) REQUIREMENT.—The lead and cooperating agencies for a qualifying project shall**  
39 **formulate and implement administrative, policy, and procedural mechanisms to enable**



1 adherence to the schedule for the qualifying project in a timely, coordinated, and  
2 environmentally responsible manner.

3 (3) GUIDANCE.—The Secretary shall issue guidance regarding the use of programmatic  
4 approaches to carry out the environmental review process that, to the maximum extent  
5 practicable—

6 (A) eliminates repetitive discussions of the same issues;

7 (B) focuses on the actual issues ripe for analysis at each level of review;

8 (C) establishes a formal process for coordinating with participating and cooperating  
9 agencies, including the establishment of a list of all data required to carry out an  
10 environmental review process; and

11 (D) complies with the National Environmental Policy Act of 1969 (42 U.S.C. 4321  
12 et seq.) and all other applicable laws and regulations.

13 (g) Administrative Record and Data Management.—

14 (1) IN GENERAL.—The lead agency shall—

15 (A) be responsible for compiling the administrative record of the information used  
16 as the basis for decisions relating to a qualifying project; and

17 (B) to the maximum extent practicable and consistent with Federal law, make  
18 available all data regarding the qualifying project in a format that is accessible via  
19 electronic means for project stakeholders, cooperating agencies, and the public.

20 (2) REPORTS.—Not less frequently than once each year, the lead agency shall submit a  
21 progress report regarding a qualifying project to project stakeholders, cooperating agencies,  
22 the Committee on Environment and Public Works of the Senate, and the Committee on  
23 Natural Resources of the House of Representatives.

24 (h) Participation by Non-Federal Project Sponsors.—

25 (1) APPLICATION TO SERVE AS COOPERATING AGENCY.—A non-Federal sponsor of a  
26 qualifying project may submit to the lead Secretary an application to serve as a cooperating  
27 agency of the qualifying project for purposes of preparing any necessary documents relating  
28 to the qualifying project, including an environmental review, if—

29 (A) the non-Federal sponsor is a public agency as defined under the laws of the State  
30 in which the non-Federal sponsor is located;

31 (B) the non-Federal sponsor agrees to adhere to—

32 (i) all required Federal laws (including regulations) in carrying out the  
33 qualifying project; and

34 (ii) all decisions regarding the qualifying project that have been agreed on by  
35 other stakeholders of the qualifying project; and

36 (C) the applicable lead agency certifies that participation by the non-Federal sponsor  
37 will not inappropriately bias the qualifying project in favor of the non-Federal sponsor.

38 (2) FUNDS.—Any funds contributed by a non-Federal sponsor to a qualifying project—

(A) may be accepted to maintain or accelerate progress on the qualifying project, subject to the condition that the Secretary shall—

(i) review the use of the funds; and

(ii) certify in writing that the funds—

(I) are used solely to complete applicable environmental reviews; and

(II) do not unduly influence any permit or approval decision regarding the qualifying project; and

(B) shall be applied toward the non-Federal cost-share of the qualifying project.

(i) Applicability to Calfed Storage Studies.—For any feasibility study referred to in section 401(3), this section shall apply to all activities to be carried out under the study on or after the date of enactment of this Act that would lead to congressional authorization of an applicable project for construction.

## SEC. 405. DAM SAFETY PROJECTS WITH INCREASED STORAGE COMPONENT.

(a) Additional Project Benefits.—The Reclamation Safety of Dams Act of 1978 is amended—

(1) in section 3 (43 U.S.C. 507), by striking “Construction” and inserting “Except as provided in section 5B, construction”; and

(2) by inserting after section 5A (43 U.S.C. 509a) the following:

### “SEC. 5B. ADDITIONAL PROJECT BENEFITS.

“(a) In General.—Notwithstanding section 3, ~~subject to subsection (c)~~, if the Secretary, in the judgment of the Secretary, makes a determination described in subsection (b), the Secretary may develop any additional project benefit—

“(1) **through the construction of new or supplementary works on a project** in conjunction with the activities carried out by the Secretary pursuant to section 2; and

“(2) subject to the conditions described in the feasibility study relating to the project.

“(b) Description of Determination.—A determination referred to in subsection (a) is a determination by the Secretary that—

“(1) an additional project benefit, including additional conservation storage capacity, is—

“(A) necessary; and

“(B) in the interests of the United States; and

“(2) the project {benefit } proposed to be carried out is—

“(A) feasible; and

“(B) not inconsistent with the purposes of this Act.

“(c) Requirements.—The costs associated with developing an additional project benefit under this section shall be—

1       “(1) allocated ~~in accordance with the authorized purposes of the relevant project; among~~  
2       **each entity that receives a benefit from the additional conservation storage capacity,**  
3       **subject to an agreement between the State and Federal funding agencies regarding**  
4       **those allocations; and**

5       “(2) repaid in accordance with all applicable provisions of Federal reclamation law (the  
6       Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and  
7       amendatory of that Act (43 U.S.C. 371 et seq.).”.

8       (b) San Luis Reservoir Expansion.—Section 103(f)(1)(A) of the Calfed Bay-Delta  
9       Authorization Act (Public Law 108–361; 118 Stat. 1694) is amended—

10       (1) by striking “Funds” and inserting the following:

11               “(i) IN GENERAL.—Funds”; and

12       (2) by adding at the end the following:

13               “(ii) ENVIRONMENTAL REVIEWS AND FEASIBILITY STUDY.—The Commissioner  
14       of Reclamation shall submit ~~{to Congress}~~— **Congress**—

15                       “(I) an expansion draft environmental impact statement and feasibility  
16                       study relating to the San Luis Reservoir by not later than April 1, 2016; and

17                       “(II) a final environmental impact statement relating to the San Luis  
18                       Reservoir by not later than December 31, 2016.”.

## 19       SEC. 406. UPDATING WATER OPERATIONS MANUALS 20       FOR NON-FEDERAL PROJECTS.

21       (a) Definitions.—In this section:

22       (1) NON-FEDERAL PROJECT.—

23               (A) IN GENERAL.—The term “non-Federal project” means a non-Federal reservoir  
24       project operated for flood control in accordance with rules prescribed by the Secretary  
25       pursuant to section 7 of the Act of December 22, 1944 (commonly known as the  
26       “Flood Control Act of 1944”) (58 Stat. 890, chapter 665).

27               (B) EXCLUSION.—The term “non-Federal project” does not include any dam or  
28       reservoir owned by—

29                       (i) the Bureau of Reclamation; or

30                       (ii) the Corps of Engineers.

31       (2) OWNER.—The term “owner” with respect to a non-Federal project, does not include—

32               (A) the Secretary;

33               (B) the Secretary of the Interior; or

34               (C) the head of any other Federal department or agency, notwithstanding any  
35       Federal monetary contribution made toward the construction cost of the relevant  
36       non-Federal project, if the contribution is predicated a on flood control or other  
37       specific benefit.

(3) SECRETARY.—The term “Secretary” means the Secretary of the Army.

(b) Review by Secretary.—

(1) IN GENERAL.—Not later than 1 year after the date of receipt of a request from the owner of a non-Federal project, the Secretary, in consultation with the owner, shall review the water control manual and flood control rule curves and any operational or structural modifications proposed by the owner, including the use of improved weather forecasting and run-off forecasting methods, to enhance the existing purposes of the non-Federal project.

(2) REPORT.—Not later than 90 days after the date of completion of a review under paragraph (1), the Secretary shall submit to the owner of the applicable non-Federal project a report describing the results of the review.

(3) PRIORITY.—In carrying out of this subsection, the Secretary shall give priority to review and revision of water control manuals and flood control rule curves for any non-Federal project—

(A) that is located in a State in which a drought emergency has been declared during the 1-year period ending on the date of review by the Secretary;

(B) the owner of which has submitted to the Secretary a formal request to review or revise the operations manual or rule curves to accommodate new watershed data or proposed project modifications or operational changes;

(C) the water control manual and hydrometeorological information establishing the flood control rule curves of which have not been revised during the 20-year period ending on the date of review by the Secretary;

(D) with respect to which a completed probable maximum flood analysis or other data indicates that revisions of the project control manual or rule curves are likely to enhance water supply benefits and flood control operations; and

(E) modifications or operational changes proposed by the owner of which are likely to enhance water supply benefits and flood control operations.

(4) NON-FEDERAL CONTRIBUTIONS.—The Secretary may accept non-Federal funds for all or a portion of the cost of carrying out a review or revision of water control manuals and rule curves for non-Federal projects under this subsection.

## SEC. 407. CENTRAL VALLEY PROJECT.

(a) Cooperative Agreements.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, to determine the feasibility of an agreement for long-term use of an existing or expanded non-Federal storage or conveyance facility to augment Federal water supply, ecosystem, and operational flexibility benefits, the Secretary shall offer to enter into cooperative agreements with non-Federal entities to provide replacement water supplies for drought relief for—

(A) contractors of the Central Valley Project (as defined in section 3403 of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706));

(B) units of the National Wildlife Refuge System;

(C) State wildlife areas; and

(D) private wetland areas.

(2) REQUIREMENTS.—A cooperative agreement under this subsection shall—

(A) include the purchase of storage capacity in non-Federal facilities from willing sellers; and

(B) provide reimbursement for the temporary use of available capacity in existing above-ground, off-stream storage and associated conveyance facilities owned by local water agencies.

(b) Report.—Not later than 2 years after the date of enactment of this Act, the Secretary shall submit to the Chief of the National Wildlife Refuge System and contractors of the Central Valley Project a report describing the feasibility of the agreement for long-term use described in subsection (a)(1).

## TITLE V—WATER RIGHTS PROTECTIONS

### SEC. 501. PROTECTIONS FOR STATE WATER PROJECT CONTRACTORS.

(a) **In General.**—If, as a result of the application of this Act, the California Department of Fish and Wildlife makes an election described in subsection (b), the water supply benefits resulting from the election that accrue to the Central Valley Project, if any, shall be shared equally with the State Water Project.

(b) **Description of Elections.**—An election referred to in subsection (a) is an election—

(1) to revoke the consistency determination pursuant to section 2080.1 of the California Fish and Game Code;

(2) to amend or issue a new consistency determination pursuant to that section of the California Fish and Game Code in a manner that results in reduced water supply to the State Water Project, as compared to the water supply available under the smelt biological opinion and the salmonid biological opinion; or

(3) to require an authorization for taking under section 2081 of the California Fish and Game Code for the operation of the State Water Project in a manner that results in reduced water supply to the State Water Project, as compared to the water supply available under the smelt biological opinion and the salmonid biological opinion. ~~[Note from client: we expect language for this critically important provision will be provided on Monday]~~

### SEC. 502. AREA OF ORIGIN PROTECTIONS.

(a) **Requirement.**—With respect to the operation of the Central Valley Project {(as defined in section 302)}, the Secretary of the Interior shall adhere to the water rights laws of the State governing water rights priorities by honoring water rights senior to those held by the United States for operation of the Central Valley Project, regardless of the source of priority,

including—

(1) any appropriative water right initiated prior to December 19, 1914; and

(2) any water right or other priority perfected, or expected to be perfected, pursuant to part 2 of division 2, article 1.7 (beginning with section 1215 of chapter 1 of part 2 of division 2, sections 10505, 10505.5, 11128, 11460, 11461, 11462, and 11463, and sections 12200 to 12220) of the California Water Code.

(b) Actions Under ESA.—Any action carried out by the Secretary of the Interior or the Secretary of Commerce pursuant to section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) that requires a diversion to be bypassed, or that involves the release of water from any Central Valley Project water storage facility, shall be carried out in accordance with the water rights priorities established by law in the State.

## SEC. 503. NO REDIRECTED ADVERSE IMPACTS.

The Secretary ~~of the Interior~~ shall ensure that, except as otherwise provided for in a water service or repayment contract, an action carried out in compliance with a legal obligation imposed pursuant to, or as a result of, this Act, including such an action under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) or any other Federal law (including regulations), shall not cause a redirected adverse water supply or an ~~adverse~~ fiscal impact to any individual or entity within the boundaries of the Sacramento River watershed or the State Water Project~~[(as defined in section 302)]~~.

## ~~SEC. 504. SACRAMENTO RIVER SETTLEMENT CONTRACTS.~~

~~[Note from client: potential language under discussion]~~

## ~~SEC. 505~~ SEC. 504. EFFECT ON STATE LAWS.

Nothing in this Act preempts any State law in effect on the date of enactment of this Act, including area of origin and other water rights protections.

## TITLE VI—MISCELLANEOUS

### SEC. 601. AUTHORIZED SERVICE AREA.

(a) In General.—The authorized service area of the Central Valley Project authorized under the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706) shall include the area within the boundaries of the Kettleman City Community Services District, California, as in existence on the date of enactment of this Act.

(b) Long-term Contract.—

(1) IN GENERAL.—Notwithstanding the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706) and subject to paragraph (2), the Secretary of the Interior, in accordance with the reclamation laws, shall enter into a long-term contract with the Kettleman City Community Services District, California, under terms and conditions mutually agreeable to the parties, for the delivery of up to 900 acre-feet of Central Valley



Project water for municipal and industrial use.

(2) LIMITATION.—Central Valley Project water deliveries authorized under the contract entered into under paragraph (1) shall be limited to the minimal quantity necessary to meet the immediate needs of the Kettleman City Community Services District, California, in the event that local supplies or State Water Project allocations are insufficient to meet those needs.

(c) Permit.—The Secretary shall apply for a permit with the State for a joint place of use {for water deliveries authorized under the contract entered into under subsection (b) ? with respect to the expanded service area under subsection (a)?}, consistent with State law.

(d) Additional Costs.—If any additional infrastructure, water treatment, or related costs are needed to implement this section, those costs shall be the responsibility of the non-Federal entity.

## SEC. 602. RESCHEDULED WATER.

(a) In General.—In connection with operations of the Central Valley Project, California, if the San Luis Reservoir does not fill by the last day of February of any year, the Secretary of the Interior shall permit any entity with an agricultural water service or repayment contract for the delivery of water from the Delta Division or the San Luis Unit to reschedule into the immediately following contract year (March 1 through the last day of February) any unused Central Valley Project water previously allocated for irrigation purposes.

(b) Apportionment.—If water remaining in Federal storage in San Luis Reservoir on the last day of February of any year is insufficient to meet all rescheduling requests under subsection (a), the Secretary of the Interior shall, based on contract quantity, apportion among all contractors that request to reschedule water all water remaining in San Luis Reservoir on the last day of February of the applicable year.

(c) Availability of Additional Water.—The Secretary shall make all reasonable efforts to make available additional rescheduled water, if the efforts do not interfere with the Central Valley Project operations in the contract year for which Central Valley Project water has been rescheduled.

## SEC. 603. FISHERIES DISASTER DECLARATION.

[TO BE SUPPLIED.]

## SEC. 604. ~~OVERSIGHT BOARD FOR RESTORATION~~ FUND ADVISORY BOARD.

### Section-

~~(a) Report; Advisory Board.~~—Section 3407 of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4726) is amended by adding at the end the following:

“(g) Report on Expenditure of Funds.—

“(1) IN GENERAL.—For each fiscal year, the Secretary, in consultation with the Advisory Board, shall submit to Congress a plan for the expenditure of all of the funds deposited into the Restoration Fund during the preceding fiscal year.

1 “(2) CONTENTS.—The plan shall include an analysis of the cost-effectiveness of each  
2 expenditure.

3 “(h) Advisory Board.—

4 “(1) ESTABLISHMENT.—There is established the Restoration Fund Advisory Board  
5 (referred to in this ~~section~~ **subsection** as the ‘Advisory Board’), which shall be composed of  
6 ~~20~~ **14** members appointed by the Secretary.

7 “(2) MEMBERSHIP.—

8 “(A) IN GENERAL.—The Secretary shall appoint ~~members~~ to the Advisory Board ~~that~~  
9 **members who** represent the various Central Valley Project stakeholders, of whom—

10 “(i) ~~4~~ **3** members shall be agricultural users of the Central Valley Project;

11 “(ii) ~~3~~ **2** members shall be municipal and industrial users of the Central Valley  
12 Project;

13 “(iii) 3 members shall be power contractors of the Central Valley Project;

14 “(iv) ~~2 members shall be contractors of the [ ] Refuge;~~ **1 member shall be a**  
15 **representative of a Federal wildlife refuge that has entered into a contract**  
16 **with the Bureau of Reclamation for Central Valley Project water supplies;**

17 “~~(v) 2 members shall represent nongovernmental organizations~~“(v) **1 member**  
18 **shall represent a nongovernmental organization** involved in the protection and  
19 restoration of California fisheries;

20 “(vi) 1 member shall represent the commercial fishing industry;

21 “(vii) 1 member shall represent the recreational fishing industry; ~~and“(viii) 1~~  
22 ~~member shall represent the National Marine Fisheries Service;~~

23 “~~(ix) 1 member shall represent the California Fish and Wildlife Service; and~~

24 “~~(x)~~“(viii) 2 members shall be appointed at the discretion of the Secretary.

25 “(B) OBSERVER.—The Secretary and the Secretary of Commerce may each  
26 designate a representative to act as an observer of the Advisory Board.

27 “(C) ~~CHAIRMAN.~~—**THE CHAIRPERSON.**—The Secretary shall appoint 1 of the  
28 members described in subparagraph (A) to serve as ~~Chairman~~ **chairperson** of the  
29 Advisory Board.

30 “(3) TERMS.—The term of each member of the Advisory Board shall be 4 years.

31 “(4) ~~DUTIES.~~—~~THE DUTIES~~ **DATE OF APPOINTMENTS.**—**The appointment of a member**  
32 **of the Advisory Board are— shall be made not later than—**

33 “~~(A) to~~“(A) **the date that is 120 days after the date of enactment of this**  
34 **subsection; or**

35 “(B) **in the case of a vacancy on the Advisory Board described in paragraph (5),**  
36 **the date that is 120 days after the date on which the vacancy occurs.**

37 “(5) VACANCIES.—



1           “(A) IN GENERAL.—A vacancy on the Advisory Board shall be—

2                   “(i) filled in the manner in which the original appointment was made; and

3                   “(ii) subject to any conditions that applied with respect to the original  
4           appointment.

5           “(B) FILLING UNEXPIRED TERM.—An individual selected to fill a vacancy on the  
6           Advisory Board shall be appointed for the unexpired term of the member  
7           replaced.

8           “(C) EXPIRATION OF TERMS.—The term of a member shall not expire before the  
9           date on which the successor of the member takes office.

10          “(6) REMOVAL.—A member of the Advisory Board may be removed from office by  
11          the Secretary.

12          “(7) NONAPPLICABILITY OF FACAA.—The Advisory Board shall not be subject to the  
13          requirements of the Federal Advisory Committee Act (5 U.S.C. App.).

14          “(8) DUTIES.—The Advisory Board shall—

15                  “(A) meet not less frequently than semiannually to develop and ~~make~~  
16                  ~~recommendations~~ **provide** to the Secretary **recommendations** regarding priorities and  
17                  spending levels on projects and programs carried out under this title;

18                  “(B) ~~to ensure that any advice given or recommendation made or~~ **recommendations**  
19                  **provided** by the Advisory Board ~~reflects~~ **reflect** the independent judgment of the  
20                  Advisory Board;

21                  “(C) not later than December 31, 2015, and annually thereafter, ~~to~~ submit to the  
22                  Secretary and Congress the recommendations under subparagraph (A); and

23                  “(D) not later than December 31, 2015, and biennially thereafter, ~~to~~ submit to  
24                  Congress a report that ~~details~~ **describes** the progress made in achieving the actions  
25                  ~~required under~~ **described in** section 3406.

26          ~~“(5)“(9) ADMINISTRATION.—With the consent of the appropriate~~ **department or** agency  
27          head, the Advisory Board may use the facilities and services of any Federal ~~agency.”.~~  
28          **department or agency.**

29          ~~SEC. 605. JUDICIAL/ADMINISTRATIVE REVIEW.~~“(10) COOPERATION AND  
30          ASSISTANCE.—

31                  [PLACEHOLDER]“(A) IN GENERAL.—On receipt of a request from the  
32                  chairperson of the Advisory Board for information or assistance to facilitate  
33                  carrying out this section, the Secretary shall promptly provide such information  
34                  or assistance, unless otherwise prohibited by law.

35          ~~SEC. 606~~“(B) OFFICE SPACE AND ASSISTANCE.—The Secretary shall provide to  
36          the Advisory Board—

37                  “(i) appropriate and adequate office space, together with such equipment,  
38                  office supplies, and communications facilities and services as may be  
39                  necessary for the operation of the Advisory Board; and

1                   “(ii) necessary maintenance services for such offices, equipment, and  
2                   facilities.”.

## 3   **SEC. 605. WATER OPERATIONS REVIEW PANEL.**

4       (a) Establishment.—There is established a panel, to be known as the “Water Operations  
5       Review Panel” (referred to in this section as the “Panel”).

6       (b) Membership.—

7           (1) COMPOSITION.—The Panel shall be composed of 5 members, **to be** appointed by the  
8       Secretary of the Interior, in consultation with the Secretary of Commerce, of whom—

9           (A) 1 member shall be a former State-elected official, who shall be the Chairperson  
10          of the Panel (referred to in this section as the “Chairperson”);

11          (B) 2 members shall be fisheries biologists, of whom—

12           (i) 1 ~~member~~ shall have expertise in Delta smelt; and

13           (ii) 1 ~~member~~ shall have expertise in salmonids; and

14          (C) 2 members shall be engineers with substantial expertise in water operations.

15       (2) RECOMMENDATIONS.—The Secretary of the Interior shall ~~consider~~ **take into**  
16       **consideration the recommendations—**

17           ~~(A) of the Governor of the State, for purposes of appointing a member under~~  
18           ~~paragraph (1)(A), the recommendations of the Governor of the State; and; and~~

19           ~~(B) of the Director of the California Department of Water Resources, for~~  
20           ~~purposes of appointing members under subparagraphs (B) and (C) of paragraph (1), the~~  
21           ~~recommendations of the Collaborative Science Adaptive Management Program policy-~~  
22           ~~group; paragraph (1)(C).~~

23       (3) PROHIBITION ON FEDERAL GOVERNMENT EMPLOYMENT.—For a period of at least 3  
24       years prior to appointment to the Panel, a member appointed to the Panel under paragraph  
25       (1) shall not have been an employee of the Federal Government.

26       ~~(4) DEADLINE FOR INITIAL APPOINTMENTS.—NOT LATER THAN DATE OF~~  
27       **APPOINTMENTS.—The appointment of a member of the Panel shall be made not later**  
28       **than—**

29           ~~(A) the date that is 120 days after the date of enactment of this Act, the Secretary of~~  
30           ~~the Interior, in consultation with the Secretary of Commerce, shall appoint the initial~~  
31           ~~members to the Panel; or~~

32           **(B) in the case of a vacancy on the Panel described in subsection (c)(2), the date**  
33           **that is 120 days after the date on which the vacancy occurs.**

34       (c) Term; Vacancies.—

35           (1) TERMS.—A member of the Panel shall be appointed for a term of 3 years, except that,  
36       with respect to the members initially appointed to the Panel under this section—

37           (A) the Chairperson shall be appointed for a term of 3 years;

(B) of the members appointed under subsection (b)(1)(B)—

(i) 1 member shall be appointed for a term of 1 year; and

(ii) 1 member shall be appointed for a term of 2 years; and

(C) of the members appointed under subsection (b)(1)(C)—

(i) 1 member shall be appointed for a term of 1 year; and

(ii) 1 member shall be appointed for a term of 2 years.

(2) VACANCIES.—

(A) IN GENERAL.—A vacancy on the Panel shall be—

(i) filled in the manner in which the original appointment was made; ~~and (ii) filled not later than the date that is 120 days after the date on which the vacancy occurs; and~~

~~(iii)~~(ii) subject to any conditions that applied with respect to the original appointment.

(B) TERM.—An individual appointed to fill a vacancy on the Panel shall be appointed for the unexpired term of the member being replaced.

(3) EXPIRATION OF TERMS.—The term of any member shall not expire before the date on which the successor of the member takes office.

~~(d) Removal.—The Secretary may remove from office a~~ **Removal.—A** member of the Panel **may be removed from office by the Secretary of the Interior.**

~~(e) Nonapplicability of FACA.—The~~

~~(e) Federal Advisory Committee Act.—The~~ Panel shall not be subject to the requirements of the Federal Advisory Committee Act (5 U.S.C. App.).

(f) Duties.—

(1) ASSESSMENT AND REPORT ON OPERATIONAL DECISIONS.—

(A) IN GENERAL.—Not later than November 30, 2015, and not later than November 30 of each year thereafter, the Panel shall submit to the Committees and Subcommittees described in subparagraph (B) a report that includes—

(i) an assessment of the operational decisions under this Act; and

(ii) recommendations for the prospective implementation of this Act.

(B) COMMITTEES AND SUBCOMMITTEES.—The Committees and Subcommittees referred to in subparagraph (A) are—

(i) the Committee on Environment and Public Works of the Senate;

(ii) the Subcommittee on Energy and Water Development of the Committee on Appropriations of the Senate;

(iii) the Committee on Natural Resources of the House of Representatives; and

(iv) the Subcommittee on Energy and Water Development of the Committee on

Appropriations of the House of Representatives.

(C) REQUIREMENTS FOR ASSESSMENT.—In making the assessment under subparagraph (A)(i), the Panel shall review and evaluate—

(i) the decisions of the Director ~~of the United States Fish and Wildlife Service,~~  
~~the Administrator of National Oceanic and Atmospheric Administration,~~ **the**  
**Assistant Administrator**, and the Commissioner ~~of Reclamation~~ in  
implementing this Act and other Federal laws applicable to the operations of the  
Central Valley Project and the State Water Project ~~(as defined in section 302);~~

(ii) the compliance of the Director ~~of the United States Fish and Wildlife~~  
~~Service, the Administrator of National Oceanic and Atmospheric Administration,~~  
**the Assistant Administrator**, and the Commissioner ~~of Reclamation~~ with the  
Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) with respect to  
operations of the Central Valley Project and the State Water Project; and

(iii) the efforts of the Director ~~of the United States Fish and Wildlife Service,~~  
~~the Administrator of National Oceanic and Atmospheric Administration,~~ **the**  
**Assistant Administrator**, and the Commissioner ~~of Reclamation~~ to minimize  
water supply disruptions while complying with the Endangered Species Act of  
1973 (16 U.S.C. 1531 et seq.) **seq.)** and this Act.

(D) REQUIREMENTS FOR RECOMMENDATIONS.—The Panel shall make  
recommendations under subparagraph (A)(ii) for prospective actions and potential  
actions for further study to better achieve the purposes of this Act or the Endangered  
Species Act of 1973 (16 U.S.C. 1531 et seq.) as applied to the operations of the Central  
Valley Project and the State Water Project ~~(as defined in section 302)~~, including  
proposals—

(i) ~~(I) to increase the population that in combination, increase—~~

**(I) the survival** of listed species; and

**(II) to increase** water supplies for the Central Valley Project and the State  
Water Project;

(ii) to increase the ~~population survival~~ of listed fish species, ~~with little to no~~  
**with the minimum practicable** adverse effects on water supplies for the Central  
Valley Project and the State Water Project ~~;~~ **and that would result from taking**  
**the specific proposed action recommended;**

~~(iii) to increase~~ **(iii) to increase the water supplies described in clause (ii)**  
**with the minimum practicable** adverse effects on the survival of listed fish  
species; and

**(iv) that respond to the annual reports of the Delta Science Program**  
**Independent Review Panel regarding long-term operations opinions.**

**(2) 5-YEAR ASSESSMENT.—**

**(A) IN GENERAL.—Not later than 5 years after the date of enactment of this Act,**  
**and every 5 years thereafter, the Panel shall publish a report that—**

1 (i) evaluates the effectiveness of this Act; and

2 (ii) makes legislative recommendations regarding—

3 (I) any provision of this Act that should be amended or repealed due  
4 to ineffectiveness or any other reason; and

5 (II) alternative legislation or modifications to this Act that could  
6 provide additional water supplies for the Central Valley Project and the  
7 State Water Project, ~~with little to no adverse effects on the population~~  
8 without reducing the survival of listed fish species.

9 (B) GOAL.—To the maximum extent practicable, the Panel shall submit  
10 legislative recommendations that, in the aggregate, would—

11 (i) improve water supplies for the Central Valley Project and the State  
12 Water Project; and

13 (ii) increase the survival of listed fish species.

14 (C) SUBMISSION TO CONGRESS.—The Panel shall submit to the Committees and  
15 Subcommittees of Congress described in paragraph (1)(B) the legislative  
16 recommendations of the Panel.

17 ~~(3)(2)~~ SUBMISSION OF COMMENTS AND PROPOSALS TO PANEL.—

18 (A) IN GENERAL.—In preparing the reports under ~~paragraph~~ paragraphs (1) and  
19 (2), the Panel shall, ~~in accordance with subparagraph (B)~~, solicit comments and  
20 proposals from any interested ~~person~~ individuals and entities, in accordance with  
21 subparagraph (B).

22 (B) SCHEDULE.—The Panel shall publish—

23 (i) a schedule for ~~the~~ receipt of comments and proposals under subparagraph  
24 (A); and

25 (ii) instructions ~~on regarding~~ how to submit ~~the comments and proposals to the~~  
26 Panel to the Panel those comments and proposals.

27 (g) Cooperation and Assistance.—

28 (1) IN GENERAL.—On request of the Chairperson for information or assistance to  
29 facilitate carrying out this section, the Secretary of the Interior and the Secretary of  
30 Commerce shall promptly provide such information or assistance to the Panel, unless  
31 otherwise prohibited by law.

32 (2) PROVISION OF OFFICE SPACE; EQUIPMENT.—The Secretary of the Interior shall provide  
33 to the Panel—

34 (A) appropriate and adequate office space;

35 (B) such equipment, office supplies, and communications facilities and services as  
36 may be necessary for the operation of the Panel; and

37 (C) any necessary maintenance services for the offices, equipment, and facilities  
38 provided under subparagraphs (A) and (B).

1 **SEC. 607 606. CONTINGENCY IN EVENT OF**  
2 **CONTINUING RESOLUTION FOR FISCAL YEAR 2015.**

3 ~~If a~~ **Any deadline applicable to a Federal department or agency, ad described in sections**  
4 **103(b), 103(d), 202, 204, and 205, shall be extended by the number of days that any**  
5 resolution providing continuing appropriations for the United States Fish and Wildlife Service or  
6 the National Marine Fisheries Service for fiscal year 2015 is ~~enacted on or in effect~~ after January  
7 1, 2015, ~~and the Secretary of the Interior and the Secretary of Commerce have consulted if—~~

8 **(1) such a continuing resolution is enacted;**

9 **(2) the continuing resolution does not include funding for the actions of the**  
10 **applicable department or agency required by this Act (or an amendment made by this**  
11 **Act); and**

12 **(3) a funding shortfall remains for the actions of the applicable department or**  
13 **agency after consultation by the head of the department or agency** with the California  
14 Department of Water Resources, Central Valley Project and State Water Project ~~(as defined~~  
15 ~~in section 302)~~ contractors, and the Interagency Ecological Program ~~about any potential~~  
16 ~~funding shortfall, the deadlines that apply to each respective Secretary, or agency, contained~~  
17 ~~in sections [ ] shall be extended by the number of days that the resolution providing~~  
18 ~~continuing appropriations applies to the applicable agency.~~

**From:** Nelson, Damon  
**Sent:** Wednesday, October 8, 2014 2:10 PM  
**To:** Tom Birmingham; Bernhardt, David L.  
**Subject:** Draft  
**Attachments:** Draft Edits for Water Bill.docx

Here is the latest changes; more will follow.

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Title: To provide drought relief in the State of California, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) Short Title.—This Act may be cited as the “California Drought Relief Act of 2014”.

(b) Table of Contents.—The table of contents of this Act is as follows:

Sec.1.Short title; table of contents.

Sec.2.Findings.

Sec.3.Definitions.

**TITLE I—ADJUSTING DELTA SMELT MANAGEMENT  
BASED ON INCREASED REAL-TIME MONITORING AND  
UPDATED SCIENCE**

Sec.101.Definitions.

Sec.102.Revise incidental take level calculation to reflect new science.

Sec.103.Factoring increased real-time monitoring and updated science into [dDelta](#) smelt management.

**TITLE II—ENSURING SALMONID MANAGEMENT IS  
RESPONSIVE TO NEW SCIENCE**

Sec.201.Definitions.

Sec.202.Required scientific studies.

Sec.203.Process for ensuring salmonid management is responsive to new science.

Sec.204.Pilot program to protect native anadramous fish in the Stanislaus River.

Sec.205.CALFED invasive species pilot projects in the Sacramento-San Joaquin Bay Delta and its tributaries.

Sec.206.Mark fishery and harvest management.

Sec.207.New actions to benefit Central Valley salmonids.

**TITLE III—OPERATIONAL FLEXIBILITY AND DROUGHT  
RELIEF**

Sec.301.Findings.

Sec.302.Definitions.



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- 1 Sec.303.Operational flexibility in times of drought.
- 2 Sec.304.Operation of cross-channel gates.
- 3 Sec.305.Flexibility for export/inflow ratio.
- 4 Sec.306.Emergency environmental reviews.
- 5 Sec.307.Prioritizing State revolving funds during droughts.
- 6 Sec.308.Increased flexibility for regular project operations.
- 7 Sec.309.Temporary operational flexibility for first few storms of 2015 water year.
- 8 Sec.310.Expediting water transfers.
- 9 Sec.311.Warren Act contracts. [PLACEHOLDER]
- 10 Sec.312.Additional Warren Act contracts. [PLACEHOLDER]

11 **TITLE IV—INCREASING WATER STORAGE**

- 12 Sec.401.Findings.
- 13 Sec.402.Calfed storage feasibility studies.
- 14 Sec.403.Water storage project construction.
- 15 Sec.404.Other storage feasibility studies.
- 16 Sec.405.Dam safety projects with increased storage component.
- 17 Sec.406.Updating water operations manuals for non-Federal projects.
- 18 Sec.407.Central Valley Project.

19 **TITLE V—WATER RIGHTS PROTECTIONS**

- 20 Sec.501.Protections for State water project contractors.
- 21 Sec.502.Area of origin protections.
- 22 Sec.503.No redirected adverse impacts.
- 23 Sec.504.Effect on State laws.

24 **TITLE VI—MISCELLANEOUS**

- 25 Sec.601.Authorized service area.
- 26 Sec.602.Rescheduled water.
- 27 Sec.603.Fisheries disaster declaration. [PLACEHOLDER]
- 28 Sec.604.Oversight board for Restoration Fund.
- 29 Sec.605.Water operations review panel.
- 30 Sec.606.Contingency in event of continuing resolution for fiscal year 2015.

31

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1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) As established in the Proclamation of a State of Emergency issued by the Governor of  
4 the State on January 17, 2014, the State is experiencing record dry conditions;

5 (2) Extremely dry conditions have persisted in the State since 2012, and the drought  
6 conditions are likely to persist into the future;

7 (3) As of September 2014, the National Weather Service’s forecast does not show a high  
8 likelihood of the State experiencing above-normal precipitation for the remainder of the  
9 calendar year;

10 (4) The water supplies of the State are at record-low levels, as indicated by the fact that  
11 all major Central Valley Project reservoir levels were at 20-35 percent of capacity as of  
12 September 25, 2014;

13 (5) The lack of precipitation has been a significant contributing factor to the 6,091 fires  
14 experienced in the State as of September 15, 2014, and which covered nearly 400,000 acres;

15 (6) According to a study released by the University of California, Davis in July 2014, the  
16 drought has led to the fallowing of 428,000 acres of farmland, loss of \$810 million in crop  
17 revenue, loss of \$203 million in dairy and other livestock value, and increased groundwater  
18 pumping costs by \$454 million. The statewide economic costs are estimated to be \$2.2  
19 billion, with over 17,000 seasonal and part-time agricultural jobs lost;

20 (7) CVPIA Level II water deliveries to refuges have also been reduced by 25% in the  
21 north of Delta region, and by 35% in the south of Delta region;

22 (8) Only one-sixth of the usual acres of rice fields are being flooded this fall, which leads  
23 to a significant decline in habitat for migratory birds and an increased risk of disease at the  
24 remaining wetlands due to overcrowding of such birds;

25 (9) The drought of 2013 through 2014 constitutes a serious emergency that poses  
26 immediate and severe risks to human life and safety and to the environment throughout the  
27 State;

28 (10) The serious emergency described in paragraph (4) requires—

29 (A) immediate and credible action that respects the complexity of the water system  
30 of the State and the importance of the water system to the entire State; and

31 (B) policies that do not pit stakeholders against one another, which history shows  
32 only leads to costly litigation that benefits no one and prevents any real solutions;

33 (11) Federal law (including regulations) directly authorizes expedited decisionmaking  
34 procedures and environmental and public review procedures to enable timely and  
35 appropriate implementation of actions to respond to the type and severity of the serious  
36 emergency described in paragraph (4); and

37 (12) The serious emergency described in paragraph (4) fully satisfies the conditions  
38 necessary for the exercise of emergency decisionmaking, analytical, and public review  
39 requirements under—

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(A) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(B) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(C) water control management procedures of the Corps of Engineers described in section 222.5 of title 33, Code of Federal Regulations (including successor regulations); and

(D) the Reclamation States Emergency Drought Relief Act of 1991 (Public Law 102–250; 106 Stat. 53).

(13) The ~~2008~~ smelt biological opinion and ~~2009~~ salmonid biological opinion contain reasonable and prudent alternatives to protect listed fish species from being jeopardized by operation of the Central Valley Project and State Water Project and to prevent adverse modification of designated critical habitat;

(14) The effect of those reasonable and prudent alternatives in the biological opinions may restrict the amount of water pumping that can occur to deliver water for agricultural, municipal, industrial, groundwater, and refuge uses in California;

(15) Data on the difference between water demand and reliable water supplies for various regions south of the ~~the~~ Delta, including the San Joaquin Valley, indicate there is a significant annual gap between reliable water supplies to meet agricultural, municipal and industrial, groundwater, and refuges water needs within the South of Delta and Friant Division of the Central Valley Project and the State Water Project south of the Sacramento-San Joaquin River Delta and north of the Tehachapi mountain range and the demands of those areas. This gap varies depending on the methodology of the analysis performed, but can be represented in the following ways:

**Commented [A1]:** Agencies are verifying the accuracy of the facts within this finding.

(A) For Central Valley Project South-of-Delta water service contractors, if it is assumed that a water supply deficit is the difference in the amount of water available for allocation versus the maximum contract quantity, particularly in more recent years, then the water supply deficits that have developed from 1992 to 2014 as a result of changes besides natural variations in hydrology during this timeframe range between 720,000 and 1,100,000 acre-feet.

(B) For Central Valley Project and State Water Project water service contractors south of the Delta and north of the Tehachapi mountain range, if it is assumed that a water supply deficit is the difference between reliable water supplies, including maximum water contract deliveries, safe yield of groundwater, safe yield of local and surface supplies and long-term contracted water transfers, and water demands, including water demands from agriculture, municipal and industrial and refuge contractors, then the water supply deficit ranges between approximately 2,500,000 to 2,700,000 acre-feet.

(C) The California Water Plan evaluated outcomes under current conditions under 198 combinations of climate and growth scenarios, projecting a range of urban and agricultural reliability into the future. Reliability in this instance is defined as the percentage of years in which demand is sufficiently met by supply. Reliability across a range of futures within the San Joaquin Valley can be presented as:

(i) For the San Joaquin River Hydrologic Region, as defined in the California

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Water Plan:

(I) Urban supply reliability ranges between 90 and 100 percent, with a mean reliability across futures in the high 90<sup>th</sup> percentile; and

(II) Agricultural supply reliability ranges between 70 and 100 percent, with a mean reliability across futures in the mid-90<sup>th</sup> percentile.

(ii) For the Tulare Lake Hydrologic Region, as defined in the California Water Plan:

(I) Urban supply reliability ranges between 70 and 100 percent, with a mean reliability across futures in the mid-90<sup>th</sup> percentile; and

(II) Agricultural supply reliability ranges between 20 and 100 percent, with a mean reliability across futures in the low 70<sup>th</sup> percentile.

(16) Since the issuance of the biological opinions, recent studies have raised questions about the benefits to endangered salmonid populations from water pumping restrictions, including:

Commented [A2]: Agencies are assessing this finding.

(A) Expert panel reviews have concluded that instantaneous water velocities in the tidal Delta affect juvenile salmonids, not “tidally average” flows, as previously assumed. Based on instantaneous water velocity modeling, water exports have a much smaller area of effect than was previously believed;

(B) Tagging studies conducted since 1993 (representing more than 28 million fish) demonstrate that the proportion of Sacramento Basin origin Chinook salmon entrained into the pumping facilities (including pre-screen losses) are on average less than 1/10 of 1%; and

(C) Telemetry studies of Sacramento Basin and San Joaquin Basin origin juvenile Chinook salmon have not demonstrated any significant adverse effect from water exports on fish survival.

(17) Data of pumping activities at the Central Valley Project and State Water Project delta pumps identifies that, on average from Water Year 2009 to Water Year 2014, pumping activity takes 893 ΔDelta smelt annually with an authorized take level of 5,003 ΔDelta smelt annually according to the biological opinion issued December 15, 2008.

(18) It is worth exploring whether there is a way to implement the biological opinions that would preserve the protections afforded listed fish and simultaneously increase water deliveries to the Central Valley Project and State Water Project without weakening environmental laws or protections.

(19) In 2014, better information exists than was known in 2008 concerning conditions and operations that may or may not lead to high salvage events that jeopardize the fish populations, and what alternative management actions can be taken to avoid jeopardy.

(20) Alternative management strategies, such as trapping and barging juvenile salmon through the Delta, removing non-native species, enhancing habitat, and monitoring fish movement and location in real-time can contribute significantly to protecting and recovering these endangered fish species, and at potentially lower costs to water supplies.

(21) Resolution of fundamental policy questions concerning the extent to which

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application of the Endangered Species Act affects the operation of the Central Valley Project and State Water Project is the responsibility of Congress.

### SEC. 3. DEFINITIONS.

In this Act:

(1) DELTA.—The term “Delta” means the Sacramento-San Joaquin Delta and the Suisun Marsh, as defined in sections 12220 and 29101 of the California Public Resources Code.

(2) Export Pumping Rates.—The term “export pumping rates” means the rates of pumping at the W.C. “Bill” Jones Pumping Plant and the Harvey O. Banks Pumping Plant, in the southern Delta.

~~(3) JEOPARDY.—The term “jeopardy” means to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.~~

~~(34)~~ LISTED FISH SPECIES.—The term “listed fish species” means listed salmonid species and the Delta smelt.

~~(45)~~ LISTED SALMONID SPECIES.—The term “listed salmonid species” means natural origin steelhead, natural origin genetic spring run Chinook, and genetic winter run Chinook salmon.

~~(5) NEGATIVE IMPACT ON THE LONG-TERM SURVIVAL.—The term “negative impact on the long-term survival” means to reduce appreciably the likelihood of the survival of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.~~

(6) OMR.—The term “OMR” means the Old and Middle River in the Delta.

(7) OMR FLOW OF -5000 CFS.—The term “OMR flow of -5000 cfs” means Old and Middle River flow of negative 5,000 cubic feet per second as measured by—

(A) the smelt biological opinion; and

(B) the salmonid biological opinion.

(8) SALMONID BIOLOGICAL OPINION.—The term “salmonid biological opinion” means the biological opinion issued by the National Marine Fisheries Service on June 4, 2009.

(9) SMELT BIOLOGICAL OPINION.—The term “smelt biological opinion” means the biological opinion on the Long-Term Operational Criteria and Plan for coordination of the Central Valley Project and State Water Project issued by the United States Fish and Wildlife Service on December 15, 2008.

(10) STATE.—The term “State” means the State of California.

## TITLE I—ADJUSTING DELTA SMELT MANAGEMENT BASED ON INCREASED REAL-TIME MONITORING AND UPDATED SCIENCE

SEC. 101. DEFINITIONS.

In this title:

(1) DIRECTOR.—The term “Director” means the Director of the United States Fish and Wildlife Service.

(2) DELTA SMELT.—The term “~~4D~~Delta smelt” means the fish species with the scientific name *Hypomesus transpacificus*.

(3) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

SEC. 102. REVISE INCIDENTAL TAKE LEVEL  
CALCULATION FOR DELTA SMELT TO REFLECT NEW  
SCIENCE.

No later than October 1, 2015, and at least every five years thereafter, the Director of Fish and Wildlife Service, in cooperation with other federal, state, and local agencies, shall use the best scientific and commercial data available to complete a review and, if warranted, a modification of the incidental take level in the ~~2008 delta~~ smelt biological opinion that takes into account, among other considerations,—

- (a) salvage information collected since at least 1993; available over at least 18 years;
- (b) updated or more recently developed statistical models;
- (c) updated scientific and commercial data; and
- (d) the most recent information regarding the environmental factors driving ~~4D~~Delta smelt salvage.

SEC. 103. FACTORING INCREASED REAL-TIME  
MONITORING AND UPDATED SCIENCE INTO DELTA  
SMELT MANAGEMENT.

(a) In General.—The reasonable and prudent alternative described in the ~~2008 delta~~ smelt biological opinion, ~~as amended~~, and any successor opinions, shall be implemented consistent with current best scientific and commercial data available, ~~and implementation shall be adjusted accordingly as new scientific and commercial data are developed.~~

(b) Increased Monitoring to Inform Real-time Operations.— ~~Contingent upon funding,~~ ~~†~~The Secretary shall conduct additional surveys, on an annual basis at the appropriate time of the year based on environmental conditions, in collaboration with other ~~4D~~Delta science interests.

- (1) In implementing this section, after seeking public input, the Secretary shall —

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(A) use the most appropriate survey methods for the detection of ~~Δ~~Delta smelt to determine the extent that adult ~~Δ~~Delta smelt are distributed in relation to certain levels of turbidity, or other environmental factors that may influence salvage rate; and

(B) use results from appropriate survey methods for the detection of ~~Δ~~Delta smelt to determine how the Central Valley Project and State Water Project may be operated more efficiently to minimize salvage while maximizing export pumping rates of water export without causing a negative impact on the long-term survival of the Delta smelt.

(2) During the period beginning on December 1, 2014 and ending March 31, 2015, and in each successive December through March period, if suspended sediment loads enter the Delta from the Sacramento River and the suspended sediment loads appear likely to raise turbidity levels in Old River north of the export pumps from values below 12 Nephelometric Turbidity Units (NTU) to values above 12 NTU, the Secretary shall—

(A) conduct daily monitoring using appropriate survey methods at locations including, but not limited to, the vicinity of Station 902 to determine the extent that adult Delta smelt are moving with turbidity toward the export pumps; and

(B) use results from the monitoring surveys referenced in paragraph (A) at locations including, but not limited to, the vicinity of Station 902 to determine how increased trawling can inform daily real-time Central Valley Project and State Water Project operations to minimize salvage while maximizing export pumping rates of water export without causing a negative impact on the long-term survival of the Delta smelt.

(c) Periodic Review of Monitoring.—Within twelve months of the date of enactment of this title, and at least once every 5 years thereafter, or sooner if the Secretary determines it is appropriate, the Secretary shall—

(1) evaluate whether the monitoring program under subsection (b), combined with other monitoring programs for the Delta, is providing sufficient data to inform Central Valley Project and State Water Project operations to minimize salvage while maximizing export pumping rates of water export without causing a negative impact on the long-term survival of the Delta smelt; and

(2) determine whether the monitoring efforts should be changed in the short- or long-term to provide more useful data.

(d) Delta Smelt Distribution Study.—

(1) IN GENERAL.— No later than January 1, 2016, in collaboration with the California Department of Fish and Wildlife, the California Department of Water Resources, public water agencies, and other interested entities,, shall implement new targeted sampling

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and monitoring specifically designed to understand ~~d~~Delta smelt abundance, distribution, and the types of habitat occupied by ~~d~~Delta smelt during all life stages.

(2) SAMPLING.—The Delta smelt distribution study shall, at a minimum—

(A) include recording water quality and tidal data;

(B) be designed to understand ~~d~~Delta smelt abundance, distribution, habitat use, and movements throughout the ~~Bay~~ Delta, Suisun Marsh, and other areas occupied by the Delta smelt during all seasons;

(C) consider areas not routinely sampled by existing monitoring programs, including wetland channels, near-shore water, depths below 35 feet, and shallow-water; and

(D) use the most biologically appropriate survey methods, including sampling gear, best suited to collect the most accurate data for the type of sampling or monitoring.

(e) Scientifically supported implementation of Old and Middle River flow requirements.—In implementing the provisions of the smelt biological opinion, or any successor biological opinion, ~~or pertaining to management of~~ reverse flow in the Old and Middle Rivers, the Secretary shall—

(1) consider the relevant provisions of the biological opinion or any successor biological opinion;

(2) manage reverse flow in Old and Middle Rivers as prescribed by the smelt biological opinion, or any successor biological opinion, to minimize water supply reductions for the Central Valley Project and the State Water Project;

~~(3) document in writing any significant facts about real-time conditions relevant to the determinations of reverse OMR flow rates less negative than -5000 cubic feet per second, including—~~

(A) ~~the findings in paragraph (3);~~

whether continued project operations over the remainder of the water year would exceed the incidental take level;

(~~E~~B) the potential effects of entrainment on subsequent smelt abundance, including consideration of the distribution of the population throughout the Delta,

(~~D~~C) the water temperature,

(~~E~~D) other factors relevant to the determination; and

(~~F~~E) whether any alternative measures could have a lesser water supply impact.

(~~5~~4) for any subsequent biological opinion, make the showing required in



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paragraph (3) for any determination to manage OMR reverse flow at rates less negative than the upper limit in the biological opinion if the upper limit in the biological opinion is more negative than -5000 cubic feet per second.

(f) Memorandum of Understanding. No later than December 1, 2014, the Commissioner and the Director will execute a Memorandum of Understanding (MOU) to ensure that the smelt biological opinion is implemented in a manner that minimizes water supply losses while complying with applicable laws and regulations. If that MOU alters any procedures set out in the biological opinion, there will be no need to reinitiate consultation if those changes do not have an adverse effect on listed species and the implementation of the MOU would not be a major change to implementation of the biological opinion. Any change to procedures that does not create a new adverse effect to listed species will not alter application of the take exemption in the incidental take statement in the biological opinion under the Endangered Species Act, section 7(o)(2).

## TITLE II—ENSURING SALMONID MANAGEMENT IS RESPONSIVE TO NEW SCIENCE

### SEC. 201. DEFINITIONS.

In this title:

(1) ASSISTANT ADMINISTRATOR.—The term “Assistant Administrator” means the Assistant Administrator of NOAA Fisheries.

(2) SECRETARY.—The term “Secretary” means the Secretary of Commerce.

### SEC. 202. REQUIRED SCIENTIFIC STUDIES.

(a) Trap and Barge Pilot Project to Increase Survivals Through the Delta.—The Assistant Administrator and the Commissioner shall, in collaboration with the U.S. Fish and Wildlife Service, the California Department of Fish and Wildlife and other interested parties, design, permit, implement and evaluate a pilot program to test the efficacy of an experimental trap and barge program to improve survival of juvenile salmonids emigrating from the San Joaquin watershed through the Delta, as further described below.

(1) Within 30 days of enactment, the Assistant Administrator shall convene a working group of the relevant agencies and other interested parties through which to develop and execute a plan for the design, budgeting, implementation and evaluation of such a pilot program, utilizing existing expertise on such trap and barge programs as may be available. Such plan shall detail a schedule and budget for the program, and identify the responsible parties for each element of the program.

(2) The Assistant Administrator shall provide an opportunity for public review and comment on the pilot program and also simultaneously seek an expeditious independent peer review of the program to improve its rigor and likelihood of success.

(3) Upon completion of (2), above, the Assistant Administrator shall complete the

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necessary design and evaluations of the pilot program and seek such permits or other regulatory authorizations as may be required under federal law for its prompt implementation and evaluation by the Assistant Administrator, the Commissioner or such other parties as they determine most suitable.

(4) ~~Subject to the availability of funding,~~ The Assistant Administrator and the Commissioner shall seek to commence implementation of the pilot program in 2015 or as soon thereafter as is possible, and shall conduct such pilot for such period of time as needed to evaluate the efficacy of the program to improve survival~~s~~ across a range of environmental conditions.

(5) The Assistant Administrator and the Commissioner shall jointly report annually to the Senate Environment and Public Works Committee and the House Committee on Natural Resources their progress in implementing this section, estimated survival rates through the Delta for both juvenile salmonids that were barged through the Delta and those that were not barged, and if survival rates are significantly higher for barged fish as compared to other outmigrating smolts, the Assistant Administrator's and Commissioner's recommendations regarding broadening the pilot program and any relevant recommendations pursuant to section 203.

(b) Tagging studies.

(1) IN GENERAL.—The Assistant Administrator, in collaboration with other ~~e~~Delta science partners, shall implement tagging studies, including acoustic telemetry and PIT tagging studies as appropriate, wherein habitat, predators, flow conditions, or other factors are experimentally altered and the behavior and survival of tagged juvenile salmonids are observed. Studies may also be conducted to aid in the understanding of Chinook salmon and steelhead abundance, distribution, and survival.

(2) SAMPLING.—The sampling—

(A) shall include recording water quality and tidal data;

(B) will be designed to aid in the understanding of salmonid abundance, distribution, and movements throughout the Bay Delta, including estimates of through Delta survival from Knights Landing or from Mossdale to Chipps Island; and

(C) will supplement, not supplant, ongoing acoustic tag and coded wire survival studies in the San Joaquin and Sacramento Rivers which the Assistant Administrator determines are crucial for trend monitoring.

**SEC. 203. PROCESS FOR ENSURING SALMONID  
MANAGEMENT IS RESPONSIVE TO NEW SCIENCE.**

(a) General directive. The reasonable and prudent alternative described in the salmonid biological opinion allows for and anticipates adjustments in operating criteria to reflect the best scientific and commercial data currently available, and authorizes efforts to test and evaluate improvements in operations that will meet applicable regulatory requirements and enable improvements in water supply reliability. The Commissioner and the Assistant Administrator are

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hereby directed to utilize these authorities fully as described below.

(b) Annual reviews of certain operating criteria. No later than December 31, 2015, and at least annually thereafter,

(1) The Commissioner, in consultation with and with the assistance of the Assistant Administrator shall ~~commence annual efforts to~~ examine and identify adjustments to the initiation of Action IV.2.3 pertaining to negative OMR flows, subject to paragraph (5).

(2) The Commissioner, in consultation with and with the assistance of the Assistant Administrator, shall examine and identify adjustments in the timing, triggers or other operational details relating to the implementation of pumping restrictions in Action IV.2.1 pertaining to the inflow to export requirements, subject to paragraph (5).

(3) Pursuant to the consultation and assessments carried out under paragraphs (1) and (2) of this subsection, the Commissioner shall make recommendations to the Assistant Administrator on adjustments that, in the exercise of the adaptive management provisions of the salmonid biological opinion, ~~can improve water supplies will reduce water supply impacts of the salmonid biological opinion on the Central Valley Project and the California State Water Project~~ and are consistent with the requirements of applicable law and as further described in subsection (c).

(4) The Commissioner shall implement those adjustments for which the conditions under subsection (c) are met.

(5) The Assistant Administrator and the Commissioner shall review and identify adjustments to water supply restrictions in any successor biological opinion to the salmonid biological opinion, applying the provisions of this section to those water supply restrictions where there are references to Actions IV.2.1 and IV.2.3.

(c) Adjustments that shall be implemented. In ~~receiving~~ reviewing the recommendations under subsection (b), the Assistant Administrator shall evaluate the effects of the recommended adjustments on listed species and shall adjustments for which:

(1) the net effect on listed species is equivalent to those of the underlying criteria in the salmonid biological opinion, taking into account whatever actions or measures may be implemented in conjunction with the adjustments to mitigate its effects; and

(2) the effects of the adjustment fall within the incidental take authorizations.

(d)

When examining and identifying opportunities to offset the potential adverse effect of adjustments to operating criteria, the Commissioner and the Assistant Administrator shall take into account the potential species salmonid survival improvements that are likely to result from other measures which, if implemented in conjunction with the adjustments, would offset ~~the~~ adverse effects, if any, of the adjustments. When ~~considering evaluating~~ offsetting measures, the Commissioner and the Assistant Administrator shall consider the type, timing and nature of the adverse effects, if any, to specific species and ensure that the measures provide equivalent overall benefits to the listed species in the aggregate, as long as the change will not cause a negative impact on the long-term survival of a listed salmonid species. in survival rates for each species remains consistent with the Endangered Species Act and implementing regulations.

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(e) Framework for examining opportunities to minimize or offset the potential adverse effect of adjustments to operating criteria.—Not later than December 31, 2015, and every five years thereafter, the Assistant Administrator shall, in collaboration with the Director of the California Department of Fish and Wildlife, based on the best scientific and commercial data available and for each listed salmonid species, issue estimates of the increase in through-Delta survival the Secretary expects to be achieved—

(1) ~~through with~~ restrictions on export ~~pumping rates~~ restrictions as specified by Action IV.2.3 as compared to limiting OMR flow to a fixed rate of -5000 cubic feet per second within the time period Action IV.2.3 is applicable, based on a given rate of San Joaquin River inflow to the Delta and holding other relevant factors constant;

(2) ~~through with~~ San Joaquin River inflow to export restrictions on export pumping rates specified within Action IV.2.1 as compared to the ~~export~~ restrictions in the April/May period imposed by the State Water Resources Control Board decision D-1641, based on a given rate of San Joaquin River inflow to the Delta and holding other relevant factors constant;

(3) ~~through by~~ a trap and barge program based on the experience of other systems to the extent they are comparable, and the study described in section 202, as that information becomes available;

(4) through physical habitat restoration improvements;

(5) through predation control programs;

(6) through the installation of temporary barriers, the management of Cross Channel Gates operations, and other projects affecting flow in the Delta;

(7) ~~through by~~ salvaging fish that may be entrained near the entrance to Clifton Court Forebay; and

(8) ~~through by~~ any other management measures that may provide equivalent or better protections benefits for listed species ~~with improvements to water supplies while~~ maximizing export pumping rates without causing a negative impact on the long-term survival of a listed salmonid species.

(f) Survival estimates.

(1) ~~To the~~ maximum extent feasible, the Assistant Administrator shall make ~~these~~ quantitative estimates of survival, and determinations quantitatively to the maximum extent feasible, such as a range of percentage increases in through-Delta survival that could result from the management measures, and if the scientific information is lacking for quantitative estimates, shall do so on qualitative terms based upon the best available science.

(2) If the Assistant Administrator provides qualitative survival estimates ~~of the benefits to the~~ for a species resulting from one or more management measures, the Secretary shall, to the maximum extent feasible, rank the management measures described in subsection (e) in terms of their most likely expected contribution to increased through-Delta survival relative to the other measures.

(3) If at the time the Assistant Administrator conducts the analysis under subsection (b),

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the Secretary has not issued an estimate of increased through-Delta survival from different management measures pursuant to subsection (e), the Secretary shall compare the protections to the species from different management measures based on the best scientific and commercial data available at the time.

- (g) Comparison of adverse consequences for alternative management measures of equal protection for a species. ~~benefit to the salmon.~~

(1) For the purposes of this subsection—

(A) The alternative management measure or combination of alternative management measures identified in paragraph (2) shall be known as the “equivalent alternative measure.”

(B) The existing measure or measures identified in subparagraphs (2)(A),(B),(C), or (D) shall be known as the “equivalent existing measure.”

(C) An “equivalent increase in through-Delta survival rates for listed salmonid species” shall mean an increase in through-Delta survival rates that is equivalent when considering the change in through-Delta survival rates for the listed salmonid species in the aggregate, and not ~~necessarily~~ the same change for each individual species, as long as the change in survival rates will not cause a negative impact on the long-term survival of a listed salmonid species. for each species remains consistent with the Endangered Species Act and implementing regulations.

(2) As part of the reviews of operating criteria pursuant to subsection (b), the Assistant Administrator shall determine whether any alternative management measures ~~or~~ combination of alternative management measures listed in subsection (e)(3) through (8) would provide an increase in through-Delta survival rates for listed salmonid species that is equivalent to the increase in through-Delta survival rates for listed salmonid species from the following:

(A) through restrictions on export pumping rates ~~with export restrictions~~ as specified by Action IV.2.3, as compared to limiting OMR flow to a fixed rate of -5000 cubic feet per second within the time period Action IV.2.3 is applicable;

(B) through restrictions on export pumping rates as specified by Action IV.2.3, as compared to a modification of Action IV.2.3 that would provide additional water supplies, other than that described in subparagraph (A);

(C) through with San Joaquin River inflow to export restrictions on export pumping rates specified within Action IV.2.1, as compared to the ~~export~~ restrictions in the April/May period imposed by the State Water Resources Control Board decision D-1641, or

(D) through with San Joaquin River inflow to export restrictions on export pumping rates specified within Action IV.2.1, as compared to a modification of Action IV.2.1 that would reduce water supply impacts of the salmonid biological opinion on the Central Valley Project and the California State Water Project, provide additional water supplies, other than that described in subparagraph (C).

(3) If the Assistant Administrator identifies an equivalent alternative measure pursuant to paragraph (2), the Assistant Administrator shall determine whether

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(A) it is technically feasible and within federal jurisdiction to implement the equivalent alternative measure, and

(B) the adverse consequences of doing so are less than the adverse consequences of the equivalent existing measure, including a concise evaluation of the adverse consequences to other affected interests.

(4) If the Assistant Administrator makes the findings in subparagraph (3)(A) and (B), the Assistant Administrator and the Commissioner shall adjust the operating criteria in the salmonid biological opinion pursuant to this subsection to implement the equivalent alternative measure in place of the equivalent existing measure in order to increase export rates of pumping-water supplies to the greatest extent possible while maintaining a net combined effect of equivalent through-Delta survival rates for the listed salmonid species.

(h) Tracking adverse effects beyond the range of effects accounted for in the salmonid biological opinion and coordinated operation with the smelt biological opinion.

(1) Among the adjustments to the operational criteria considered through the adaptive management process under this section, the Assistant Administrator and the Commissioner shall

(A) Evaluate the effects on listed salmonid species and water supply of the potential adjustment to operational criteria described in subparagraph (B); and

(B) Consider requiring that before some or all of the provisions of Actions IV.2.1. or IV.2.3 are imposed in any specific instance, the Assistant Administrator show that the implementation of these provisions in that specific instance is necessary to avoid a negative impact on the long-term survival of a listed salmonid species.~~additional adverse effects upon listed salmonid species beyond the range of effects analyzed and accounted for in the salmonid biological opinion~~

(2) The Assistant Administrator, the Director and the Commissioner, in coordination with State officials as appropriate, shall establish operational criteria to coordinate management of OMR flows under the smelt and salmonid biological opinions, in order to take advantage of opportunities to provide additional water supplies from the coordinated implementation of the biological opinions.

(i) Real-Time Monitoring and Management. The Assistant Administrator and the Commissioner shall, through the NMFS adaptive management salmonid biological opinion provisions, analyze whether date-certain triggers that limit OMR reverse flow to -5000 cubic feet per second could be adjusted to instead use real-time migration information on salmonids. If the analysis shows that the use of real-time information to trigger OMR flow limitations would improve water supply without causing significant adverse effects to Winter-run Chinook salmon, then such real-time management triggers shall be implemented.

## **SEC. 204. PILOT PROGRAM TO PROTECT NATIVE ANADROMOUS FISH IN THE STANISLAUS RIVER.**

(a) Establishment of Non-native Predator Fish Removal Program. The Assistant Administrator, in consultation with the United States Fish and Wildlife Service and the California Department of Fish and Wildlife, shall develop and conduct a pilot non-native

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predator fish removal program to remove non-native striped bass, smallmouth bass, largemouth bass, black bass, and other non-native predator fishes in and around the Bay Delta, including the Stanislaus River, contingent upon funding. The pilot program shall--

(1) be scientifically based;

(2) include methods to quantify the number and size of predator fishes removed each year, the impact of such removal on the overall abundance of predator fishes, and the impact of such removal on the populations of juvenile anadromous fish found in the Stanislaus River and elsewhere by, among other things, evaluating the number of juvenile anadromous fish that migrate past the rotary screw trap located at Caswell;

(3) among other methods, use wire fyke trapping, portable resistance board weirs, and boat electrofishing, which are among the most effective predator collection techniques that minimize effects to native anadromous fish;

(4) be developed, including the application for all necessary scientific research and species enhancement permits under section 10(a)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)), for the performance of the pilot program, not later than 6 months after the date of the enactment of this Act;

(5) be implemented on the first business day of the calendar year following the issuance of all necessary scientific research, species enhancement permits, and funding needed to begin the pilot program; and

(6) be implemented for a period of seven consecutive calendar years.

(b) Management. The Assistant Administrator is authorized and encouraged to enter into agreements with interested local water districts to jointly develop, implement and evaluate this pilot program. Such parties shall work collaboratively to ensure the performance of the pilot program, and shall discuss and agree upon, among other things, changes in the structure, management, personnel, techniques, strategy, data collection, reporting and conduct of the pilot program.

(c) Conduct.—

(1) IN GENERAL.—By agreement between the Assistant Administrator and the participating districts, the pilot program may be conducted by their own personnel, qualified private contractors hired by the districts, personnel of, on loan to, or otherwise assigned to NOAA Fisheries, or a combination thereof.

(2) PARTICIPATION BY NOAA FISHERIES.—In the event the districts elect to conduct the program using their own personnel or qualified private contractors hired by them, the Commissioner has the option to assign an employee of, on loan to, or otherwise assigned to NOAA Fisheries, to be present for all activities performed in the field. Such presence shall ensure compliance with the agreed upon elements specified in subsection (b). The districts shall pay 100 percent of the cost of such participation as specified in subsection (d).

(3) TIMING OF ELECTION.—The districts shall notify the Assistant Administrator of their election on or before October 15 of each calendar year of the pilot program, which election shall apply to the work performed in the subsequent calendar year.

(d) Funding.—

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(1) ANNUAL FUNDING.—The Commissioner, the Assistant Administrator, and the participating districts shall develop a budget and funding plan for the pilot project that will allocate costs appropriately amongst the participating entities. On or before December 1 of each year of the pilot program, the Commissioner shall submit to the districts an estimate of the cost to be incurred by the Bureau of Reclamation in the following calendar year, if any, including the cost of any data collection and posting under subsection (e). If an amount equal to the estimate is not provided to the Assistant Administrator by the districts on or before December 31 of each year, (a) NOAA Fisheries shall have no obligation to conduct the pilot program activities otherwise scheduled, and (b) the districts shall be prohibited from conducting any aspect of the pilot program, until full payment is made by the districts.

(2) ACCOUNTING.—On or before September 1 of each calendar year, the Assistant Administrator shall provide an accounting of the prior calendar year's expenses to the participating entities. If the estimate paid by the districts was less than the actual costs incurred by NOAA Fisheries, the districts shall have until September 30 of that calendar year to pay the difference to the fund identified by the Assistant Administrator in subsection (d)(1), or NOAA Fisheries shall have no obligation to conduct the pilot program activities otherwise scheduled. If the estimate paid by the districts was greater than the actual costs incurred by NOAA Fisheries, then a credit shall be provided to the districts, which shall be deducted from the estimate payment the districts must make for the work performed by NOAA Fisheries, if any, in the next calendar year.

(e) Reporting and Evaluation.—

(1) IN GENERAL.—On or before the 15th day of each month, the Assistant Administrator shall post on the website of NOAA Fisheries a tabular summary of the raw data collected in the prior month.

(2) REPORT.—On or before June 30 of the calendar year following the completion of the program, the Assistant Administrator and districts shall jointly submit a report for peer review that—

(A) discusses the findings and conclusions of the pilot program;

(B) synthesizes the data collected under paragraph (1); and

(C) makes recommendations for further study and action.

(f) Permits Process.—

(1) Not later than one year after filing of an application by the Assistant Administrator and the districts, the Secretary of the Interior, the Secretary of Commerce, or both, as appropriate, shall issue all necessary scientific research and species enhancement permits under section 10(a)(1) of the Endangered Species Act (16 U.S.C. 153(9)(a)(1)), for the performance of the pilot program.

(2) All permits issued shall be in the name of NOAA Fisheries and the participating districts.

(3) Districts may delegate the authority to administer the permit authority to any qualified private contractor retained in accordance with subsection (c).



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(g) Emergency Environmental Reviews.—To expedite this environmentally beneficial program for the conservation of threatened and endangered species, the Secretary of the Interior shall consult with the Council on Environmental Quality in accordance with Section 1506.11 of title 40, Code of Federal Regulations (including successor regulations) to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 for this section.

(h) Definitions.—For the purposes of this section:

(1) COMMISSIONER.—The term ‘Commissioner’ means the Commissioner of the Bureau of Reclamation.

(2) DISTRICTS.—The term ‘districts’ means the Oakdale Irrigation District and the South San Joaquin Irrigation District.

(3) PILOT PROGRAM.—The term ‘program’ means the pilot non-native predator removal program established under this section.

(i) Sunset.—The authorities provided under this section shall expire seven years after the implementation of the pilot program.

**SEC. 205. CALFED INVASIVE SPECIES PILOT PROJECTS  
IN THE SACRAMENTO-SAN JOAQUIN BAY DELTA AND  
ITS TRIBUTARIES.**

(a) FINDINGS.—Congress finds that—

(1) The Sacramento-San Joaquin Bay Delta and its Tributaries-

(A) is one of the largest and most diverse estuaries in the United States,

(B) is a natural treasure and a vital link in California’s water system, and

(C) has native biodiversity important to the ecological and economic systems of California, including water deliveries to agriculture, municipalities and to the environment and fisheries industries, and

(D) has river tributaries important for rearing of salmon and steelhead smolts which experience a high level of predation from non-native species.

(2) Past, present and future introductions of invasive species are and will be a major factor in the decline of native pelagic and anadromous endangered or threatened species in the Sacramento–San Joaquin Bay Delta and its tributaries.

(3) More than 250 nonnative aquatic and plant species have been introduced into the Delta and its tributaries; of these, at least 185 species have become established and have altered the Sacramento-San Joaquin Bay Delta watershed’s ecosystem.

(4) The Bay Delta Conservation Plan, the Recovery Plan for the Evolutionarily Significant Units of Sacramento River Winter-run Chinook Salmon and Central Valley Spring-run Chinook Salmon and the Distinct Population Segment of the Central Valley Steelhead, the Recovery Plan for the Sacramento-San Joaquin Delta Native Fishes, and the multiple 5 year reviews of those plans all highlight that introduced nonnative invasive species are a significant factor in the decline of native fish species. These nonnative species,

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which include invasive aquatic vegetation, predators, and competitors, directly or indirectly cause biological stress for pelagic and anadromous endangered or threatened fish species in the Sacramento-San Joaquin Bay-Delta and its tributaries.

(5) If threats by nonnative species to native fish species are not addressed, there is a probability that native species of the Sacramento-San Joaquin Bay-Delta watershed's pelagic and anadromous community will go extinct.

(6) The CALFED legislation (Public Law 108-361) authorized a program to prevent, control, and eradicate invasive species, but it has not been implemented to date.

(7) A focused pilot program needs to be conducted within the Delta and river tributaries to reduce threats to native listed species by nonnative species. Reducing nonnative stressors on native listed species will contribute to both native listed species recovery and lowering the impact on downstream water users as those native listed species recover.

(b) PILOT PROJECTS TO IMPLEMENT CALFED INVASIVE SPECIES PROGRAM.

(1) Not later than January 1, 2016, the Secretary of the Interior, in collaboration with the Secretary of Commerce and the Director of the California Department of Fish and Wildlife, shall begin pilot projects to implement the invasive species program, including prevention, control and eradication authorized pursuant to Section 103(d)(6)(A)(iv) of Public Law 108-361. The pilot projects shall:

(A) seek to reduce invasive aquatic vegetation, predators, and other competitors which are major factors in the decline of native listed pelagic and anadromous species that occupy the Sacramento and San Joaquin Rivers and their tributaries and the Sacramento-San Joaquin Bay-Delta; and

(B) address how to remove, reduce, or control the effects of species including: Asiatic clams, silversides, gobies, Brazilian water weed, largemouth bass, smallmouth bass, striped bass, crappie, bluegill, white and channel catfish, and brown bullheads.

(2) The Secretary of the Interior's efforts shall consist of the following phases:

(A) Phase 1. The Secretary of the Interior shall convene a panel of experts, including experts recommended by the State of California, to:

- (i) Identify the non-native species having the greatest impact on the viability of native pelagic and anadromous native listed species; and
- (ii) Identify the non-native species for which actions to reduce or control the population is determined to be possible; and
- (iii) Design a study to reduce the non-native species identified in clauses (i) and (ii) and prepare a cost estimate to implement this study.

(B) Phase 2. The Secretary of the Interior shall test the general viability of nonnative reduction methods, including either direct predator removal or alteration of channel conditions, or some combination thereof, through pilot projects at multiple sites in addition to the projects on the Stanislaus River pursuant to Section 204, including known hotspots of predator aggregation or activity, such as:

- (i) Clifton Court Forebay,
- (ii) Central Valley Project intakes,

**Commented [A3]:** Awaiting feedback from the agencies on whether the experts in an existing predation workshop would address the items outlined in clauses (i) through (iii) of subparagraph (A) in the proposed text.

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- (iii) Head of Old River,
- (iv) Georgiana Slough,
- (v) Old and Middle Rivers,
- (vi) Franks Tract,
- (vii) Paintersville Bridge,
- (viii) individual river tributaries important for wild populations of anadromous species listed as threatened or endangered under the Endangered Species Act of 1973,
- (ix) Human-made submerged structures, and
- (x) Salvage release sites.

(C) Phase 3. If it is feasible to do so, the Secretary of the Interior shall implement nonnative reduction methods at a larger number of sites, incorporating information learned during the first and second phase.

(3) The Secretary of the Interior shall collect data associated with the implementation of the projects above, and shall specifically collect data on the impact on

(A) pelagic and anadromous species listed as threatened or endangered under the Endangered Species Act of 1973,

(B) water quality, and

(C) water supply.

(4) After assessing the data described in subparagraph (2), the Secretary of the Interior, in collaboration with the Secretary of Commerce and the Director of the California Department of Fish and Wildlife, shall, if appropriate, annually recommend revisions to the reasonable and prudent alternatives contained in the salmonid biological opinion and the smelt biological opinion, or other administrative federal requirements governing the operation of the Central Valley Project and the State Water Project, that are likely to produce additional fishery, water quality, and water supply benefits.

(c) IMPLEMENTATION. The Secretary of the Interior shall implement the CALFED program described in subpart (b) for at least a period of seven consecutive years beginning on the date of implementation.

(d) REPORTING REQUIREMENTS. The Secretary of the Interior shall provide reports to the Senate Committee on Environment and Public Works and the House Committee on Natural Resources on the following:

(1) No later than January 1, 2016, a description of the projects described in subpart (b), including the application for all necessary scientific research and species enhancement permits under section 10(a) (1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)), and for the performance of the CALFED invasive species Program.

(2) Upon the completion of Phase 1 as described in subsection (b)(1)(A), a report describing its implementation and cost effectiveness.

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(3) Two years after the project begins, a report describing the progress of the eradication of the nonnative species in the Sacramento-San Joaquin Bay-Delta and its tributaries and how such efforts have helped the Recovery Plans for endangered and threatened Anadromous and Pelagic Species in the Sacramento-San Joaquin Bay-Delta watershed and the associated cost effectiveness of each control measure.

(4) After the pilot projects are complete, a report describing the results of the program, including recommendations on whether the program should be continued, how the program may be taken to full scale in the most cost effective manner, and how a mitigation program for the Central Valley Project allowable under section 10(a)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)) could be implemented.

(e) EMERGENCY ENVIRONMENTAL REVIEWS. To expedite this environmentally beneficial program for the conservation of threatened and endangered species, the Secretary of the Interior shall consult with the Council on Environmental Quality in accordance with section 1506.11 of title 40, Code of Federal Regulations (including successor regulations) to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 for this program.

## **SEC. 206. MARK FISHERY AND HARVEST MANAGEMENT.**

To minimize the impact of harvest and project operations on salmonids, contribute to recovery of stocks of endangered or threatened species, improve management of fish stocks of both hatchery and natural origins, and to minimize risk of a natural origin fall Chinook listing under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), the Assistant Administrator shall

(1) in partnership with the Director of the California Department of Fish and Wildlife and persons responsible for funding Central Valley hatcheries, convene an independent science panel within 60 days of enactment of this Act to follow up on the 2012 California Hatchery Scientific Review Group's recommendations by providing an assessment of costs and benefits associated with marking, with tagging, and with a program that combines in some way marking and tagging Central Valley hatchery produced fall Chinook. The Assistant Administrator shall ensure that the independent science panel—

(A) Includes an appropriate number of scientific experts as determined and appointed by the Assistant Administrator, and an equal number of scientific experts selected by entities responsible for funding California salmon mitigation hatcheries;

(B) Considers and gives equal weight to both inland and ocean monitoring and management needs, including harvest.

(C) Completes the review by December 31, 2015.

(2) assess and implement harvest management strategies by October 1, 2018 to provide better protection for sensitive Chinook stocks while still allowing for harvest of hatchery fall Chinook.

## **SEC. 207. NEW ACTIONS TO BENEFIT CENTRAL**

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**VALLEY SALMONIDS.**

Not later than March 1, 2016, under similar terms and conditions as successful United States Fish and Wildlife Service programs on Clear Creek and Battle Creek, the Director, in collaboration with the Director of the California Department of Fish and Wildlife, the Commissioner of the Bureau of Reclamation, or both, shall issue necessary permits and otherwise facilitate the deployment of temporary in-river structures—

(1) to protect and grow natural origin spring Chinook populations by blocking access to hatchery origin fall Chinook; and

(2) to prevent hatchery origin Chinook salmon and steelhead from reaching spawning grounds where the species will compete for spawning with natural origin fish listed under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

**TITLE III—OPERATIONAL FLEXIBILITY AND DROUGHT RELIEF**

**SEC. 301. FINDINGS.**

Congress finds that—

(1) Based on the congressional findings in Sec. 2 of this Act, it is appropriate and necessary for federal agencies to exercise the maximum amount of flexibility provided to them under the applicable laws and regulations to maximize delivery of water supplies while providing the same or better levels of protection for species.

**SEC. 302. DEFINITIONS.**

In this title:

(1) **CENTRAL VALLEY PROJECT.**—The term “Central Valley Project” has the meaning given the term in section 3403 of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4707).

(2) **KLAMATH PROJECT.**—The term “Klamath Project” means the Bureau of Reclamation project in the States of California and Oregon, as authorized under the Act of June 17, 1902 (32 Stat. 388, chapter 1093).

(3) **RECLAMATION PROJECT.**—The term “Reclamation Project” means a project constructed pursuant to the authorities of the reclamation laws and whose facilities are wholly or partially located in the State.

(4) **SECRETARIES.**—The term “Secretaries” means—

(A) the Administrator of the Environmental Protection Agency;

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- (B) the Secretary of Agriculture;  
(C) the Secretary of Commerce; and  
(D) the Secretary of the Interior.

(5) STATE WATER PROJECT.—The term “State Water Project” means the water project described by California Water Code section 11550 et seq., and operated by the California Department of Water Resources.

**SEC. 303. OPERATIONAL FLEXIBILITY IN TIMES OF DROUGHT.**

(a) Water Supplies.—

(1) IN GENERAL.—In response to a declaration of a state of drought emergency by the Governor of California and for the period of time such a drought declaration remains in effect, the Secretaries shall provide the maximum quantity of water supplies practicable to Central Valley Project agricultural, municipal and industrial, and refuge service and repayment contractors, State Water Project contractors, and any other tribe, locality or municipality in the State, by approving, consistent with applicable laws (including regulations), projects and operations to provide additional water supplies as quickly as practicable based on available information to address the emergency conditions.

(2) APPLICATION.—Paragraph (1) applies to projects or operations involving the Klamath Project if the projects or operations would benefit Federal water contractors in the State.

(b) Administration.—In carrying out subsection (a), the Secretaries shall, consistent with applicable laws (including regulations)—

(1) issue all necessary permit decisions under the authority of the Secretaries not later than 30 days after the date on which the Secretaries receive a completed application from the State to place and use temporary barriers or operable gates in Delta channels to improve water quantity and quality for the State Water Project and the Central Valley Project south of Delta water contractors and other water users, on the condition that the barriers or operable gates—

(A) provide benefits for species protection and in-Delta water user water quality; and

(B) are designed so that formal consultations under section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) are not necessary;

(2) require the Director of the United States Fish and Wildlife Service and the Commissioner of Reclamation—

(A) to complete, not later than 30 days after the date on which the Director or the Commissioner receives a complete written request for water transfer associated with voluntarily fallowing nonpermanent crops in the State, all requirements under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) necessary to make final permit decisions on the request; and

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(B) to grant any water transfer request described in subparagraph (A) to maximize the quantity of water supplies available for nonhabitat uses, on the condition that the following and associated water transfer are in compliance with applicable Federal laws (including regulations);

(3) adopt a 1:1 inflow to export ratio for the increment of increased flow of the San Joaquin River, as measured as a 3-day running average at Vernalis during the period beginning on April 1, and ending on May 31, resulting from voluntary sale, transfers, or and exchanges of water from agencies with rights to divert water from the San Joaquin River or its tributaries, supplies, on the condition that a proposed transfer or exchange under this paragraph may only proceed if the Secretary of the Interior determines that the environmental effects of the proposed transfer or exchange are consistent with effects permissible under applicable law (including regulations), and provided that Delta conditions are suitable to allow movement of the acquired, transfer, transferred, or exchanged water through the Delta consistent with the Central Valley Project's and the State Water Project's Reclamation's permitted water rights; and

(4) Provide additional priority for eligible WaterSMART projects that address drought conditions including projects that—

(A) provide emergency drinking and municipal water supplies to localities in a quantity necessary to meet minimum public health and safety needs;

(B) prevent the loss of permanent crops;

(C) minimize economic losses resulting from drought conditions; or

(D) provide innovative water conservation tools and technology for agriculture and urban water use that can have immediate water supply benefits.

(c) Accelerated Project Decision and Elevation.—

(1) IN GENERAL.— On request by the Governor of the State, the heads of Federal agencies shall use the expedited procedures under this subsection to make final decisions relating to a Federal project or operation if the project's or operation's purpose is to provide relief for emergency drought conditions pursuant to subsections (a) and (b).

(2) REQUEST FOR RESOLUTION.—

(A) IN GENERAL.—On request by the Governor of the State, the head of a Federal agency referenced in paragraph (1), or the head of another Federal agency responsible for carrying out a review of a project, as applicable, the Secretary of the Interior shall convene a final project decision meeting with the heads of all relevant Federal agencies to decide whether to approve a project to provide relief for emergency drought conditions.

(B) MEETING.—The Secretary of the Interior shall convene a meeting requested under subparagraph (A) not later than 7 days after the date on which the meeting request is received.

(3) NOTIFICATION.—On receipt of a request for a meeting under paragraph (2), the Secretary of the Interior shall notify the heads of all relevant Federal agencies of the request, including information on the project to be reviewed and the date of the meeting.

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(4) DECISION.—Not later than 10 days after the date on which a meeting is requested under paragraph (2), the head of the relevant Federal agency shall issue a final decision on the project, subject to subsection (e)(2).

(5) MEETING CONVENED BY SECRETARY.—The Secretary of the Interior may convene a final project decision meeting under this subsection at any time, at the discretion of the Secretary, regardless of whether a meeting is requested under paragraph (2).

(d) Application.—To the extent that a Federal agency, other than the agencies headed by the Secretaries, has a role in approving projects described in subsections (a) and (b), this section shall apply to those Federal agencies.

(e) Limitation.—Nothing in this section authorizes the heads of applicable Federal agencies to approve projects—

(1) that would otherwise require congressional authorization; or

(2) without following procedures required by applicable law.

(f) 2015 Drought Plan. The Secretaries of Commerce and the Interior, in consultation with appropriate State officials, shall develop a drought operations plan for [the duration of the existing drought emergency 2015](#) that is consistent with the provisions of this section and other provisions of this Act intended to provide additional water supplies that could be of assistance during the current drought.

## SEC. 304. OPERATION OF CROSS-CHANNEL GATES.

(a) In General.—The Secretary of Commerce and the Secretary of the Interior shall jointly—

(1) authorize and implement activities to ensure that the Delta Cross Channel Gates remain open to the maximum extent practicable using findings from the United States Geological Survey on diurnal behavior of juvenal salmonids, timed to maximize the peak flood tide period and provide water supply and water quality benefits for the duration of the drought emergency declaration of the State, consistent with operational criteria and monitoring criteria developed pursuant to the Order Approving a Temporary Urgency Change in License and Permit Terms in Response to Drought Conditions of the California State Water Resources Control Board, effective January 31, 2014 (or a successor order) and other authorizations associated with it;

(2) with respect to the operation of the Delta Cross Channel Gates described in paragraph (1), collect data on the impact of that operation on—

(A) species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(B) water quality; and

(C) water supply;

(3) consistent with knowledge gained from activities carried out during 2014, collaborate with the California Department of Water Resources to install a deflection barrier at Georgiana Slough in coordination with Delta Cross Channel Gate diurnal operations to protect migrating salmonids;

**Commented [A4]:** Agencies are investigating the feasibility of diurnal operations.



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(4) evaluate the combined salmonid survival in light of activities carried out pursuant to paragraphs (1) through (3) in deciding how to operate the Delta Cross Channel gates to enhance salmonid survival and water supply benefits; and

(5) not later than May 15, 2015, submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives a written report on the extent to which the gates are able to remain open.

(b) Recommendations.—After assessing the information collected under subsection (a), the Secretary of the Interior shall recommend revisions to the operation of the Delta Cross-Channel Gates, to the Central Valley Project, and to the State Water Project, including, if appropriate, any reasonable and prudent alternative contained in the biological opinion issued by the National Marine Fisheries Service on June 4, 2009, that are likely to produce fishery, water quality, and water supply benefits. The Secretary shall also coordinate with the State Water Resources Control Board to seek consistent direction for the operation of the Delta Cross-Channel Gates under federal and state law, including Water Right Decision 1641.

#### **SEC. 305. FLEXIBILITY FOR EXPORT/INFLOW RATIO.**

In response to the declaration of a state of drought emergency by the Governor of California and for the period of time such a drought declaration remains in effect, the Commissioner of the Bureau of Reclamation shall continue to vary the averaging period of the Delta Export/Inflow ratio pursuant to the California State Water Resources Control Board decision D1641, approved in the March Temporary Urgency Change Order—

(1) to operate to a 35 percent Export/Inflow ratio with a 3 day averaging period on the rising limb of a Delta inflow hydrograph; and

(2) to operate to a 14 day averaging period on the falling limb of the Delta inflow hydrograph.

#### **SEC. 306. EMERGENCY ENVIRONMENTAL REVIEWS.**

To minimize the time spent carrying out environmental reviews and to deliver water quickly that is needed to address emergency drought conditions in the State during the duration of an emergency drought declaration, the head of each applicable Federal agency shall, in carrying out this Act, consult with the Council on Environmental Quality in accordance with section 1506.11 of title 40, Code of Federal Regulations (including successor regulations), to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) during the emergency.

#### **SEC. 307. PRIORITIZING STATE REVOLVING FUNDS DURING DROUGHTS.**

(a) In General.—This section shall apply for each of the fiscal years during which an emergency drought declaration of the State is in effect.

(b) The Administrator of the Environmental Protection Agency, in implementing the processes and programs under the State water pollution control revolving funds established under title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) and the State drinking water treatment revolving loan funds established under section 1452 of the Safe Drinking Water Act

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(42 U.S.C. 300j–12), shall, for those projects that are eligible to receive assistance under section 603 of the Federal Water Pollution Control Act (33 U.S.C. 1383) or section 1452(a)(2) of the Safe Drinking Water Act (42 U.S.C. 300j–12(a)(2)),

(1) issue a determination of waivers within 30 days of the conclusion of the informal public comment period pursuant to section 436(c) of title IV of division G of Public Law 113–76; and

(2) authorize, at the request of the State, 40-year financing for assistance under section 603(d)(2) of the Federal Water Pollution Control Act (33 U.S.C. 1383(d)(2)) or section 1452(f)(2) of the Safe Drinking Water Act (42 U.S.C. 300j–12(f)(2)).

(c) Effect of Section.—Nothing in this section authorizes the Administrator of the Environmental Protection Agency to modify any funding allocation, funding criteria, or other requirement relating to State water pollution control revolving funds established under title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) and the State drinking water treatment revolving loan funds established under section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12) for any other State.

## **SEC. 308. INCREASED FLEXIBILITY FOR REGULAR PROJECT OPERATIONS.**

The Secretaries shall, consistent with applicable laws (including regulations)—

(1) to the maximum extent practicable, based on the availability of water and without causing land subsidence or violating water quality standards—

(A) help meet the contract water supply needs of Central Valley Project refuges through the improvement or installation of water conservation measures, water conveyance facilities, and wells to use groundwater resources, on the condition that those activities may only be accomplished by using funding made available under the Water Assistance Program or the WaterSMART program of the Department of the Interior; and

(B) make available to Central Valley Project contractors a quantity of Central Valley Project surface water obtained from the activities carried out under subparagraph (A);

(2) contingent upon funding, in coordination with the Secretary of Agriculture, enter into an agreement with the National Academy of Sciences to conduct a comprehensive study, to be completed not later than 1 year after the date of enactment of this Act, on the effectiveness and environmental impacts of saltcedar biological control efforts on increasing water supplies and improving riparian habitats of the Colorado River and its principal tributaries, in the State and elsewhere;

(3) in coordination with the California Department of Water Resources and the California Department of Fish and Wildlife, implement offsite upstream projects in the Delta and upstream Sacramento River and San Joaquin basins that offset the effects on species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) due to activities carried out pursuant this Act, as determined by the Secretaries;

(4) manage reverse flow in the Old and Middle Rivers as prescribed by the biological opinions issued by the United States Fish and Wildlife Service on December 15, 2008, for

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Delta smelt and by the National Marine Fisheries Service on June 4, 2009, for salmonids, or any successor biological opinions, to minimize water supply reductions for the Central Valley Project and the State Project, and issue guidance no later than December 31, 2015 directing their employees to take all steps necessary to manage flow in accordance with this paragraph;

(5) as soon as practicable after the date of enactment of this Act and pursuant to existing authority available to the Secretary of the Interior, participate in, issue grants, or otherwise provide funding for pilot projects to increase water in reservoirs in regional river basins experiencing extreme, exceptional, or sustained drought that have a direct impact on the water supply of the State, including the Colorado River Basin, on the condition that any participation, grant, or funding by the Secretary of the Interior with respect to the Upper Division shall be with or to the respective State; and

(6) use all available scientific tools to identify any changes to real-time operations of the Bureau of Reclamation, State, and local water projects that could result in the availability of additional water supplies.

**SEC. 309. TEMPORARY OPERATIONAL FLEXIBILITY  
FOR FIRST FEW STORMS OF 2015 WATER YEAR.**

(a) Findings:

(1) During the 2014 water year, operations of the Central Valley Project and the State Water Project, the incidental take of adult Delta smelt was zero; of juvenile Delta smelt, 78 (7.7% of the incidental take limit); of winter run chinook, 339 (1.4% of the incidental take limit); of spring run chinook, zero; and of steelhead, 261 (8.7% of the incidental take limit).

(2) The Central Valley Project and State Water Project exceeded a Old and Middle River flow of -5,000 cubic feet per second over a 14-day average for brief periods after three storm events in February and March 2014, as a result of increased pumping, but did not cause substantially increased take of smelt or salmon.

(3) Hydrological conditions in dry years, such as the 2014 water year, have not triggered water pumping restrictions pursuant to the ~~2008~~ smelt biological opinion.

(4) The Secretaries should be allowed more flexibility to increase pumping levels without causing significant risk to the listed species or weakening other environmental protections.

(5) Given California's severe drought conditions, significant groundwater withdrawals for irrigation due to lack of surface water supplies, and the depletion of water supplies in reservoirs, it is imperative that the Secretaries exercise the flexibility provided herein to capture the maximum amount of storm flows when and if they occur in the 2015 water year, and provide for the diversion of those supplies to the Central Valley Project and State Water

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Project so that farms, businesses, and homes in drought-stricken areas will have an opportunity to bolster their meager supplies when water is available.

(b) In general. Consistent with avoiding additional adverse effects upon listed fish species beyond the range of those authorized under the Endangered Species Act and other environmental protections under subsection (e), the Secretaries shall authorize the Central Valley Project and the State Water Project, combined, to operate at levels that result in Old and Middle River flows at up to -7500 cubic feet per second (based on United States Geological Survey gauges on Old and Middle Rivers) daily average for up to 21 cumulative days after October 1, 2014, as described in subsection (c).

(c) Days of temporary operational flexibility. The temporary operational flexibility described in subsection (b) shall be authorized on days that the California Department of Water Resources determines the daily average river flow of the Sacramento River is at, or above, 17,000 cubic feet per second as measured at the Sacramento River at Freeport gauge maintained by the United States Geologic Survey.

(d) Compliance with ESA authorizations. In carrying out this section, the Secretaries may continue to impose any requirements under the biological opinions during any period of temporary operational flexibility as they determine are reasonably necessary to avoid additional adverse effects on listed fish species beyond the range of those authorized under the Endangered Species Act.

(e) Other environmental protections.

(1) The Secretaries' actions under this section shall be consistent with applicable regulatory requirements under state law, including State Water Resources Control Board Decision 1641, as it may be implemented in any given year;

(2) During the first flush of sediment out the Delta during the 2015 water year, OMR flow may be managed at rates less negative than -5000 cubic feet per second for a minimum duration to avoid movement of adult Delta smelt (*Hypomesus transpacificus*) to areas in the southern Delta that would be likely to increase entrainment at Central Valley Project and State Water Project pumping plants;

(3) This section shall not have any effect on the applicable requirements of the salmonid biological opinion from April 1 to May 31, unless the Secretary of Commerce finds that some or all of such applicable requirements may be adjusted during this time period to provide emergency water supply relief without resulting in additional adverse effects beyond those authorized under the Endangered Species Act.

(4) During operations under this section, the Commissioner of Reclamation, in coordination with the Fish and Wildlife Service, National Marine Fisheries Service, and California Department of Fish and Wildlife, shall undertake a monitoring program and other data gathering to insure take limits levels are not exceeded, and to identify potential negative impacts and actions necessary to mitigate any impacts of the temporary operational flexibility to species listed as threatened or endangered under the Endangered Species Act, 16 U.S.C. 1531-1544; and

(5) The Commissioner is authorized to take any action, including the transfer of appropriated funds between accounts that, in the Commissioner's judgment, are necessary to

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mitigate the impacts of such operations as long as any such mitigation is consistent with the requirements of this section.

(f) Technical adjustments to target period. If, before temporary operational flexibility has been implemented on 21 cumulative days, the Secretaries operate the Central Valley Project and the State Water Project combined at levels that result in Old and Middle River flows less negative than -7500 cubic feet per second during days of temporary operational flexibility as defined in subsection (c), the duration of such operation shall not be counted toward the 21 cumulative days specified in subsection (b).

(g) Emergency consultation; effect on running averages.

(1) If necessary to implement the provisions of this section, the Commissioner shall use the emergency consultation procedures under the Endangered Species Act and its implementing regulation at 50 CFR 402.05 to temporarily adjust the operating criteria under the biological opinions, solely for the 21 days of temporary operational flexibility—

(A) no more than necessary to achieve the purposes of this section consistent with the environmental protections in subsections (d) and (e); and

(B) including, as appropriate, adjustments to ensure that the actual flow rates during the periods of temporary operational flexibility do not count toward the 5-day and 14-day running averages of tidally filtered daily Old and Middle River flow requirements under the biological opinions.

(2) Following the conclusion of the 21 days of temporary operational flexibility, the Commissioner shall not reinitiate consultation on these adjusted operations if the effects on listed fish species of these operations under this section remain within the range of those authorized under the Endangered Species Act.

(h) Level of detail required for analysis. In articulating the determinations required under this section, the Secretaries shall fully satisfy the requirements herein but shall not be expected to provide a greater level of supporting detail for the analysis than feasible to provide within the short time frame permitted for timely decision-making in response to changing conditions in the Delta.

(i) Duration. This section shall expire on September 30, 2015.

## **SEC. 310. EXPEDITING WATER TRANSFERS.**

(a) In General.—Section 3405(a) of the Central Valley Project Improvement Act (Public Law 102-575; 106 Stat. 4709(a)) is amended—

(1) by redesignating paragraphs (1) through (3) as paragraphs (4) through (6), respectively;

(2) in the matter preceding paragraph (4) (as so designated)—

(A) in the first sentence, by striking “In order to” and inserting the following:

“(1) IN GENERAL.—In order to”; and

(B) in the second sentence, by striking “Except as provided herein” and inserting the following:

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“(3) TERMS.—Except as otherwise provided in this section”; and

(3) by inserting before paragraph (3) (as so designated) the following:

“(2) EXPEDITED TRANSFER OF WATER.—The Secretary shall take all necessary actions to facilitate and expedite transfers of Central Valley Project water in accordance with—

“(A) this Act;

“(B) any other applicable provision of the reclamation laws; and

“(C) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).”;

(4) in paragraph (4) (as so designated)—

(A) in subparagraph (A), by striking “to combination” and inserting “or combination”; and

(B) by striking “3405(a)(2) of this title” each place it appears and inserting “(5)”;

(5) in paragraph (5) (as so designated), by adding at the end the following:

“(E) The contracting district from which the water is coming, the agency, or the Secretary shall determine if a written transfer proposal is complete within 45 days after the date of submission of the proposal. If the contracting district or agency or the Secretary determines that the proposal is incomplete, the district or agency or the Secretary shall state with specificity what must be added to or revised for the proposal to be complete.”; and

(6) in paragraph (6) (as so designated), by striking “3405(a)(1)(A)-(C), (E), (G), (H), (I), (L), and (M) of this title” and inserting “(A) through (C), (E), (G), (H), (I), (L), and (M) of paragraph (4)”.

(b) Conforming Amendments.—The Central Valley Project Improvement Act (Public Law 102–575) is amended—

(1) in section 3407(c)(1) (106 Stat. 4726), by striking “3405(a)(1)(C)” and inserting “3405(a)(4)(C)”; and

(2) in section 3408(i)(1) (106 Stat. 4729), by striking “3405(a)(1) (A) and (J) of this title” and inserting “subparagraphs (A) and (J) of section 3405(a)(4)”

**SEC. 311. WARREN ACT CONTRACTS.**

[To be supplied.]

**SEC. 312. ADDITIONAL WARREN ACT CONTRACTS.**

[To be supplied.]

**TITLE IV—INCREASING WATER STORAGE**

**SEC. 401. FINDINGS.**

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1 Congress finds that—

2 (1) the record drought conditions being experienced in the State as of the date of  
3 enactment of this Act are—

4 (A) expected to recur in the future; and

5 (B) likely to do so with increasing frequency;

6 (2) water storage is an indispensable and integral part of any solution to address the long-  
7 term water challenges of the State;

8 (3) Congress authorized relevant feasibility studies for 4 water storage projects in the  
9 State, including projects for—

10 (A) enlargement of Shasta Dam in Shasta County under section 2(a) of Public Law  
11 96–375 (94 Stat. 1506), as reaffirmed under section 103(d)(1)(A)(i)(I) of Public Law  
12 108–361 (118 Stat. 1684);

13 (B) enlargement of Los Vaqueros Reservoir in Contra Costa County under section  
14 215 of Public Law 108–7 (117 Stat. 147), as reaffirmed under section  
15 103(d)(1)(A)(i)(II) of Public Law 108–361 (118 Stat. 1684);

16 (C) construction of North-of-Delta Offstream Storage (Sites Reservoir) in Colusa  
17 County under section 215 of Public Law 108–7 (117 Stat. 147), as reaffirmed under  
18 section 103(d)(1)(A)(ii)(I) of Public Law 108–361 (118 Stat. 1684); and

19 (D) construction of the Upper San Joaquin River storage (Temperance Flat) in  
20 Fresno and Madera Counties under section 215 of Public Law 108–7 (117 Stat. 147),  
21 as reaffirmed under section 103(d)(1)(A)(ii)(II) of Public Law 108–361 (118 Stat.  
22 1684);

23 (4) (A) as of the date of enactment of this Act, it has been more than 10 years since the  
24 authorization of the feasibility studies referred to in paragraph (3); but

25 (B) complete and final feasibility studies have not been prepared for any of those  
26 water storage projects;

27 (5) as of August 2014, only 2 of the 4 projects referred to in paragraph (3) have  
28 completed draft feasibility studies;

29 (6) the slow pace of work on completion of the feasibility studies for those 4 water  
30 storage projects is—

31 (A) unjustified; and

32 (B) of deep concern; and

33 (7) there is significant public interest in, and urgency with respect to, completing all  
34 feasibility studies and environmental reviews for the water storage projects referred to in  
35 paragraph (3), given the critical need for that infrastructure to address the water challenges  
36 of the State.

37 **SEC. 402. CALFED STORAGE FEASIBILITY STUDIES.**

38 (a) In General.—Notwithstanding subparagraph (B)(i) of section 103(d)(1) of Public Law

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108-361 (118 Stat. 1684), the Secretary of the Interior, acting through the Commissioner of Reclamation (referred to in this title as the “Secretary”), shall complete a final feasibility study and any other applicable environmental review documents for the project described in—

(1) subparagraph (A)(i)(I) of that section by not later than December 31, 2014;

(2) subparagraph (A)(ii)(II) of that section by not later than July 31, 2015.

(b) Environmental Reviews.—In carrying out subsection (a), the Secretary—

(1) shall ensure that—

(A) all applicable reviews, including reviews required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), are completed as expeditiously as practicable; and

(B) the shortest applicable process under that Act is used, including in the completion of—

(i) feasibility studies;

(ii) draft environmental impact statements; and

(iii) final environmental impact statements; and

(2) shall not be required to complete a draft or final environmental impact statement if the Commissioner of Reclamation determines, and the Secretary concurs, that the project fails to meet applicable Federal cost-benefit requirements or standards.

(c) Accountability.—

(1) If the Bureau of Reclamation determines that an environmental review document for the water storage projects referenced in of Section 103(d)(1) of P.L. 108-361 will not be completed according to the schedule specified in subsection (a), the Bureau shall notify the Senate Committee on Energy and Natural Resources, the Senate Appropriations Subcommittee on Energy and Water Development, and the House of Representatives Transportation and Infrastructure Committee within 14 days of the determination. The notification shall include:

(A) An explanation of the delay;

(B) The anticipated length of the delay and the revised completion date;

(C) The steps that the Bureau will take to mitigate the delay, including, but not limited to, a request to reprogram existing funds appropriated to the Bureau to meet the revised completion deadline.

(2) The Bureau of Reclamation shall carry out the procedures in subsection (a) for each subsequent delay beyond the revised completion deadline.

**SEC. 403. WATER STORAGE PROJECT CONSTRUCTION.**

(a) The Secretary, acting through the Commissioner of the Bureau of Reclamation, may partner or enter into an agreement on the water storage projects identified in section 103(d)(1) of the Water Supply Reliability and Environmental Improvement Act (Public Law 108-361) (and Acts supplemental and amendatory to the Act) with local joint powers authorities formed pursuant to State law by irrigation districts and other local water districts and local governments



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within the applicable hydrologic region, to advance those projects.

(b) [PLACEHOLDER FOR AUTHORIZATION ISSUE]

**SEC. 404. OTHER STORAGE FEASIBILITY STUDIES.**

(a) Definition of Qualifying Project.—In this section, the term “qualifying project” means new surface water storage projects constructed on lands administered by the Department of the Interior in a State in which the Bureau of Reclamation has jurisdiction, exclusive of any easement, right-of-way, lease, or any private holding.

(b) Lead Agency.—

(1) QUALIFYING PROJECTS WITHIN JURISDICTION OF BUREAU OF RECLAMATION.—The Bureau of Reclamation shall serve as the lead agency for purposes of coordinating all reviews, analyses, opinions, statements, permits, licenses, and other approvals or decisions required under Federal law (including regulations) to construct qualifying projects within the jurisdiction of the Bureau.

(2) QUALIFYING PROJECTS OUTSIDE JURISDICTION OF BUREAU OF RECLAMATION.—If the site of a qualifying project is not located in a State in which the Bureau of Reclamation has jurisdiction, the Secretary shall, by not later than 45 days after the date of receipt of an application for the qualifying project—

(A) designate an alternate agency within the Department of the Interior to serve as the lead agency for purposes of coordinating all reviews, analyses, opinions, statements, permits, licenses, and other approvals or decisions required under Federal law (including regulations) to construct the qualifying project; or

(B) in consultation with the heads of other Federal departments and agencies, identify the appropriate lead agency for the qualifying project.

(c) Cooperating Agencies.—

(1) FEDERAL DEPARTMENTS AND AGENCIES.—The lead agency designated under paragraph (1) or (2) of subsection (b) shall—

(A) as soon as practicable after receipt of an application for a qualifying project, identify any Federal department or agency that may have jurisdiction over a review, permit, license, approval, or decision required for the qualifying project under applicable Federal laws (including regulations); and

(B) as soon as practicable after the date of identification under subparagraph (A)—

(i) notify each applicable department or agency of the identification; and

(ii) designate the department or agency as a cooperating agency, unless the department or agency—

(I) has no jurisdiction or authority with respect to the qualifying project;

(II) has no expertise or information relevant to the qualifying project or any review, permit, license, approval, or decision associated with the qualifying project; or

(III) does not intend—

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(aa) to submit comments regarding the qualifying project; or

(bb) to conduct any review of the qualifying project or make any decision with respect to the qualifying project in a manner other than in cooperation with the Bureau of Reclamation.

(2) STATES.—A State in which a qualifying project is proposed to be carried out may elect, consistent with Federal and State law, to participate as a cooperating agency, if the lead agency designated for the proposed qualifying project under paragraph (1) or (2) of subsection (b) determines that the applicable agency of the State—

(A) has jurisdiction over the qualifying project under applicable Federal or State law;

(B) is required to conduct or issue a review of the qualifying project; and

(C) is required to make a determination regarding issuing a permit, license, or approval of the qualifying project.

(d) Duties of Lead Agency.—

(1) IN GENERAL.—Not later than 30 days after the date of receipt of an application for approval of a qualifying project, the lead agency shall hold a meeting among the applicant, the lead agency, and all cooperating agencies to establish, with respect to the qualifying project, all applicable—

(A) requirements;

(B) review processes; and

(C) stakeholder responsibilities.

(2) SCHEDULE.—

(A) ESTABLISHMENT.—Not later than 30 days after the date of the meeting under paragraph (1), the lead agency, in consultation with the attendees of the meeting, shall establish a schedule for completion of the qualifying project, taking into consideration, among other relevant factors—

(i) the responsibilities of cooperating agencies under applicable laws and regulations;

(ii) the resources available to the cooperating agencies and non-Federal project stakeholders;

(iii) the overall size and complexity of the qualifying project;

(iv) the overall schedule for, and cost of, the qualifying project; and

(v) the sensitivity of the natural and historic resources that may be affected by the qualifying project.

(B) REQUIREMENTS.—On establishment of a schedule for a qualifying project under subparagraph (A), the lead and cooperating agencies shall—

(i) to the maximum extent practicable, adhere to the schedule; and

(ii) submit to the Committee on Environment and Public Works of the Senate

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and the Committee on Natural Resources of the House of Representatives on a semiannual basis a report describing any delays in the schedule, including a description of—

(I) the reasons for the delay;

(II) the actions that the lead and cooperating agencies will take to minimize the delay; and

(III) a revised schedule for the qualifying project, if applicable.

(e) Environmental Reviews.—

(1) SINGLE, UNIFIED ENVIRONMENTAL REVIEW DOCUMENT.—

(A) IN GENERAL.—The lead agency with respect to a qualifying project, in consultation with appropriate stakeholders and cooperating agencies, shall determine whether a single, unified environmental review document relating to the qualifying project is sufficient to comply with applicable Federal laws (including regulations), including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(B) ACTION ON DECLINATION.—If, after consultation under subparagraph (A), a lead agency determines not to adopt a single, unified environmental review document relating to a qualifying project—

(i) the lead agency shall—

(I) document the reasons for the determination; and

(II) submit to the Secretary a report describing those reasons; and

(ii) the Secretary may require the adoption of a single, unified document at the discretion of the Secretary, based on good cause.

(2) ENVIRONMENTAL ASSESSMENT.—Except as provided under paragraph (4), if the lead agency with respect to a qualifying project, in consultation with cooperating agencies, determines that an environmental assessment is sufficient to comply with the requirements of this subsection and other applicable Federal laws (including regulations)—

(A) the public comment period for a draft environmental assessment shall be no more than 60 days after publication in the Federal Register of notice of the public issuance of that draft; and

(B) the lead agency shall issue the final environmental assessment by not later than 180 days after the end of the period for public comments on the draft environmental assessment.

(3) ENVIRONMENTAL IMPACT STATEMENT.— Except as provided under paragraph (4), if the lead agency with respect to a qualifying project, in consultation with cooperating agencies, determines that an environmental impact statement is required to comply with the requirements of this subsection and other applicable Federal laws (including regulations)—

(A) the public comment period for a draft environmental impact statement shall be no more than 60 days after publication in the Federal Register of notice of the public issuance of that draft; and

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(B) the lead agency shall issue the final environmental impact statement by not later than 1 year after the end of the period for public comments on the draft environmental impact statement.

(4) MODIFICATION OF SCHEDULE.—In carrying out paragraphs (2) and (3),

(A) the lead agency with respect to a qualifying project may modify the schedule of the qualifying project if:

(i) the Federal lead agency can demonstrate good cause, such as the need for additional time to comply with other statutory or regulatory requirements other than the National Environmental Policy Act of 1969, and the head of that agency submits to Congress a written determination describing the cause and reasons for the modification no less than 30 days before the original scheduled deadline; or

(ii) the Federal lead agency, the project sponsor, the joint lead agency (as applicable), and all participating and cooperating agencies agree to such modification.

(B) no modification pursuant to subparagraph (4)(A) shall postpone the issuance of a final environmental assessment by more than 1 year, or a final environmental impact statement by more than 2 years, unless the conditions under (4)(A)(i) or (4)(A)(ii) are met.

(C) If a modification occurs pursuant to this paragraph, the Federal lead agency shall issue and adhere to the revised schedule unless the conditions under (4)(A)(i) or (4)(A)(ii) are met.

(5) REQUIREMENTS.—On commencement of the environmental review process under this subsection, the lead and cooperating agencies shall, as soon as practicable—

(A) make available to all stakeholders of the qualifying project information regarding—

(i) the environmental and socioeconomic resources located within the area of the qualifying project; and

(ii) the general locations of the alternatives under consideration; and

(B) identify any issues of concern regarding the potential environmental or socioeconomic effects of the qualifying project, including any issues that could substantially delay or prevent an agency from granting a permit or other approval that is needed for a study relating to the qualifying project.

(f) Concurrent Review Actions.—

(1) IN GENERAL.—Any review, analysis, permit, license, approval, or decision regarding a qualifying project made by a Federal, State, or local government agency shall be—

(A) conducted, to the maximum extent practicable, concurrently with any other applicable government agency; and

(B) incorporated in the schedule for the qualifying project under subsection (d)(2).

(2) REQUIREMENT.—The lead and cooperating agencies for a qualifying project shall formulate and implement administrative, policy, and procedural mechanisms to enable

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adherence to the schedule for the qualifying project in a timely, coordinated, and environmentally responsible manner.

(3) GUIDANCE.—The Secretary shall issue guidance regarding the use of programmatic approaches to carry out the environmental review process that, to the maximum extent practicable—

(A) eliminates repetitive discussions of the same issues;

(B) focuses on the actual issues ripe for analysis at each level of review;

(C) establishes a formal process for coordinating with participating and cooperating agencies, including the establishment of a list of all data required to carry out an environmental review process; and

(D) complies with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and all other applicable laws and regulations.

(g) Administrative Record and Data Management.—

(1) IN GENERAL.—The lead agency shall—

(A) be responsible for compiling the administrative record of the information used as the basis for decisions relating to a qualifying project; and

(B) to the maximum extent practicable and consistent with Federal law, make available all data regarding the qualifying project in a format that is accessible via electronic means for project stakeholders, cooperating agencies, and the public.

(2) REPORTS.—Not less frequently than once each year, the lead agency shall submit a progress report regarding a qualifying project to project stakeholders, cooperating agencies, the Committee on Environment and Public Works of the Senate, and the Committee on Natural Resources of the House of Representatives.

(h) Participation by Non-Federal Project Sponsors.—

(1) APPLICATION TO SERVE AS COOPERATING AGENCY.—A non-Federal sponsor of a qualifying project may submit to the lead Secretary an application to serve as a cooperating agency of the qualifying project for purposes of preparing any necessary documents relating to the qualifying project, including an environmental review, if—

(A) the non-Federal sponsor is a public agency as defined under the laws of the state in which the agency is located;

(B) the non-Federal sponsor agrees to adhere to—

(i) all required Federal laws (including regulations) in carrying out the qualifying project; and

(ii) all decisions regarding the qualifying project that have been agreed on by other stakeholders of the qualifying project; and

(C) the applicable lead agency certifies that participation by the non-Federal sponsor will not inappropriately bias the qualifying project in favor of the non-Federal sponsor.

(2) FUNDS.—Any funds contributed by a non-Federal sponsor to a qualifying project—

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(A) may be accepted to maintain or accelerate progress on the qualifying project, subject to the condition that the Secretary shall—

(i) review the use of the funds; and

(ii) certify in writing that the funds—

(I) are used solely to complete applicable environmental reviews; and

(II) do not unduly influence any permit or approval decision regarding the qualifying project; and

(B) shall be applied toward the non-Federal cost-share of the qualifying project.

(i) **Applicability to Calfed Storage Studies.**—For any feasibility study referred to in section 401(3), this section shall apply to all activities to be carried out under the study on or after the date of enactment of this Act that would lead to congressional authorization of an applicable project for construction.

**SEC. 405. DAM SAFETY PROJECTS WITH INCREASED STORAGE COMPONENT.**

(a) **Additional Project Benefits.**—The Reclamation Safety of Dams Act of 1978 is amended—

(1) in section 3 (43 U.S.C. 507), by striking “Construction” and inserting “Except as provided in section 5B, construction”; and

(2) by inserting after section 5A (43 U.S.C. 509a) the following:

**“SEC. 5B. ADDITIONAL PROJECT BENEFITS.**

“(a) **In General.**—Notwithstanding section 3, if the Secretary, in the judgment of the Secretary, makes a determination described in subsection (b), the Secretary is authorized to develop any additional project benefit—

“(1) through the construction of new or supplementary works on a project in conjunction with the activities carried out by the Secretary pursuant to section 2; and

“(2) subject to the conditions described in the feasibility study relating to the project.

“(b) **Description of Determination.**—A determination referred to in subsection (a) is a determination by the Secretary that—

“(1) an additional project benefit, including but not limited to additional conservation storage capacity, is—

“(A) necessary; and

“(B) in the interests of the United States; and

“(2) the project benefit proposed to be carried out is—

“(A) feasible; and

“(B) not inconsistent with the purposes of this Act.

“(c) **Requirements.**—The costs associated with developing an additional project benefit under

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this section shall be—

“(1) allocated to entity or entities benefitting from the additional conservation storage capacity, subject to agreement between the state and federal funding agencies on such allocations; and

“(2) repaid in accordance with all applicable provisions of Federal reclamation law (the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act (43 U.S.C. 371 et seq.).”.

(b) San Luis Reservoir Expansion.—Section 103(f)(1)(A) of Public Law 108–361 (118 Stat. 1694) is amended—

(1) by striking “Funds” and inserting the following:

“(i) IN GENERAL.—Funds”; and

(2) by adding at the end the following:

“(ii) ENVIRONMENTAL REVIEWS AND FEASIBILITY STUDY.—The Commissioner of Reclamation shall submit to Congress—

“(I) an expansion draft environmental impact statement and feasibility study relating to the San Luis Reservoir by not later than April 1, 2016; and

“(II) a final environmental impact statement relating to the San Luis Reservoir by not later than December 31, 2016.”.

**SEC. 406. UPDATING WATER OPERATIONS MANUALS  
FOR NON-FEDERAL PROJECTS.**

(a) Definitions.—In this section:

(1) NON-FEDERAL PROJECT.—

(A) IN GENERAL.—The term “non-Federal project” means a non-Federal reservoir project operated for flood control in accordance with rules prescribed by the Secretary pursuant to section 7 of the Act of December 22, 1944 (commonly known as the “Flood Control Act of 1944”) (58 Stat. 890, chapter 665).

(B) EXCLUSION.—The term “non-Federal project” does not include any dam or reservoir owned by—

(i) the Bureau of Reclamation; or

(ii) the Corps of Engineers.

(2) OWNER.—The term “owner” with respect to a non-Federal project, does not include—

(A) the Secretary;

(B) the Secretary of the Interior; or

(C) the head of any other Federal department or agency, notwithstanding any Federal monetary contribution made toward the construction cost of the relevant non-Federal project, if the contribution is predicated a on flood control or other specific benefit.

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(3) SECRETARY.—The term “Secretary” means the Secretary of the Army.

(b) Review by Secretary.—

(1) IN GENERAL.—Not later than 1 year after the date of receipt of a request from the owner of a non-Federal project, the Secretary, in consultation with the owner, shall review the water control manual and flood control rule curves and any operational or structural modifications proposed by the owner, including the use of improved weather forecasting and run-off forecasting methods, to enhance the existing purposes of the non-Federal project.

(2) REPORT.—Not later than 90 days after the date of completion of a review under paragraph (1), the Secretary shall submit to the owner of the applicable non-Federal project a report describing the results of the review.

(3) PRIORITY.—In carrying out of this subsection, the Secretary shall give priority to review and revision of water control manuals and flood control rule curves for any non-Federal project—

(A) that is located in a State in which a drought emergency has been declared during the 1-year period ending on the date of review by the Secretary;

(B) the owner of which has submitted to the Secretary a formal request to review or revise the operations manual or rule curves to accommodate new watershed data or proposed project modifications or operational changes;

(C) the water control manual and hydrometeorological information establishing the flood control rule curves of which have not been revised during the 20-year period ending on the date of review by the Secretary;

(D) with respect to which a completed probable maximum flood analysis or other data indicates that revisions of the project control manual or rule curves are likely to enhance water supply benefits and flood control operations; and

(E) modifications or operational changes proposed by the owner of which are likely to enhance water supply benefits and flood control operations.

(4) NON-FEDERAL CONTRIBUTIONS.—The Secretary may accept non-Federal funds for all or a portion of the cost of carrying out a review or revision of water control manuals and rule curves for non-Federal projects under this subsection.

**SEC. 407. CENTRAL VALLEY PROJECT.**

(a) Cooperative Agreements.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, to determine the feasibility of an agreement for long-term use of an existing or expanded non-Federal storage or conveyance facility to augment Federal water supply, ecosystem, and operational flexibility benefits, the Secretary shall offer to enter into cooperative agreements with non-Federal entities to provide replacement water supplies for drought relief for—

(A) contractors of the Central Valley Project (as defined in section 3403 of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706));



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(B) units of the National Wildlife Refuge System;

(C) State wildlife areas; and

(D) private wetland areas.

(2) REQUIREMENTS.—A cooperative agreement under this subsection shall—

(A) include the purchase of storage capacity in non-Federal facilities from willing sellers; and

(B) provide reimbursement for the temporary use of available capacity in existing above-ground, off-stream storage and associated conveyance facilities owned by local water agencies.

(b) Report.—Not later than 2 years after the date of enactment of this Act, the Secretary shall submit to the Chief of the National Wildlife Refuge System and contractors of the Central Valley Project a report describing the feasibility of the agreement for long-term use described in subsection (a)(1).

## TITLE V—WATER RIGHTS PROTECTIONS

### SEC. 501. PROTECTIONS FOR STATE WATER PROJECT CONTRACTORS.

If, as a result of the application of this Act, the California Department of Fish and Wildlife:

(a) revokes the consistency determination pursuant to California Fish and Game Code section 2080.1;

(b) amends or issues a new consistency determination pursuant to California Fish and Game Code section 2080.1 in a manner that results in reduced water supply to the State Water Project as compared with the water supply available under the smelt biological opinion and the salmonid biological opinion; or

(c) requires take authorization under section 2081 for operation of the State Water Project in a manner that results in reduced water supply to the State Water Project as compared with the water supply available under the smelt biological opinion and the salmonid biological opinion,

then, the water supply benefits of such action by the California Department of Fish and Wildlife accruing to the Central Valley Project, if any, shall be shared equally with the State Water Project.

### SEC. 502. AREA OF ORIGIN PROTECTIONS.

(a) The Secretary of the Interior (Secretary) is directed in the operation of the Central Valley Project (CVP) to adhere to California's water rights laws governing water rights priorities by honoring water rights senior to those held by the United States for operation of the CVP, regardless of the source of priority, including any appropriative water rights initiated prior to December 19, 1914, as well as water rights and other priorities perfected or to be perfected

**Commented [A5]:** The agencies have not had a chance to fully analyze this Title. We expect the House to provide further suggestions, and we will seek the agencies' technical feedback on the entire title with the House's suggestions included.

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pursuant to California Water Code Part 2 of Division 2. Article 1.7 (commencing with section 1215 of Chapter 1 of Part 2 of Division 2, Sections 10505, 10505.5, 11128, 11460, 11461, 11462 and 11463, and Sections 12200 to 12220, inclusive).

(b) Any action that requires that diversions be bypassed or that involves the release of water from any CVP water storage facility taken by the Secretary or the Secretary of the Department of Commerce pursuant to Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531, et seq.) shall be applied in a manner that is consistent with water rights priorities established by California law.

**SEC. 503. NO REDIRECTED ADVERSE IMPACTS.**

The Secretary shall ensure that, except as otherwise provided for in a water service or repayment contract, actions taken in compliance with legal obligations imposed pursuant to or as a result of this Act, including, but not limited to, such actions under the Endangered Species Act of 1973 (16 U.S.C. § 1531 et seq.) and other federal laws, shall not cause redirected adverse water supply or fiscal impacts to those within the Sacramento River Watershed or the State Water Project.

**SEC. 504. EFFECT ON STATE LAWS.**

Nothing in this Act preempts any State law in effect on the date of enactment of this Act, including area of origin and other water rights protections.

**TITLE VI—MISCELLANEOUS**

**SEC. 601. AUTHORIZED SERVICE AREA.**

(a) In General.—The authorized service area of the Central Valley Project authorized under the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706) shall include the area within the boundaries of the Kettleman City Community Services District, California, as in existence on the date of enactment of this Act.

(b) Long-term Contract.—

(1) IN GENERAL.—Notwithstanding the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706) and subject to paragraph (2), the Secretary of the Interior, in accordance with the reclamation laws, shall enter into a long-term contract with the Kettleman City Community Services District, California, under terms and conditions mutually agreeable to the parties, for the delivery of up to 900 acre-feet of Central Valley Project water for municipal and industrial use.

(2) LIMITATION.—Central Valley Project water deliveries authorized under the contract entered into under paragraph (1) shall be limited to the minimal quantity necessary to meet the immediate needs of the Kettleman City Community Services District, California, in the event that local supplies or State Water Project allocations are insufficient to meet those needs.

(c) Permit.—The Secretary shall apply for a permit with the State for a joint place of use for

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water deliveries authorized under the contract entered into under subsection (b) with respect to the expanded service area under subsection (a), consistent with State law.

(d) Additional Costs.—If any additional infrastructure, water treatment, or related costs are needed to implement this section, those costs shall be the responsibility of the non-Federal entity.

## SEC. 602. RESCHEDULED WATER.

(a) In General.—In connection with operations of the Central Valley Project, California, if the San Luis Reservoir does not fill by the last day of February of any year, the Secretary of the Interior shall permit any entity with an agricultural water service or repayment contract for the delivery of water from the Delta Division or the San Luis Unit to reschedule into the immediately following contract year (March 1 through the last day of February) any unused Central Valley Project water previously allocated for irrigation purposes.

(b) Apportionment.—If Project water remaining in Federal storage in San Luis Reservoir on the last day of February of any year is insufficient to meet the aggregate of all requests to rescheduling water requests under subsection (a), the Secretary of the Interior shall, based on contract quantity, apportion among all contractors that request to reschedule water all Project water remaining in San Luis Reservoir on the last day of February of the applicable year.

(c) Availability of Additional Water.—If water remaining in San Luis Reservoir on the last day of February is apportioned pursuant to paragraph (b), the Secretary shall make all reasonable efforts to make available additional rescheduled water up to the aggregate of rescheduling requests: provided that such if the efforts shall do not interfere with the Central Valley Project operations or the Secretary's ability to meet the United States' obligations to San Joaquin River Exchange Contractors or other settlement contractors in the contract year for which Central Valley Project water has been rescheduled.

## SEC. 603. FISHERIES DISASTER DECLARATION.

[TO BE SUPPLIED.]

## SEC. 604. OVERSIGHT BOARD FOR RESTORATION FUND.

(a) Report; Advisory Board.—Section 3407 of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4726) is amended by adding at the end the following:

“(g) Report on Expenditure of Funds.—

“(1) IN GENERAL.—For each fiscal year, the Secretary, in consultation with the Advisory Board, shall submit to Congress a plan for the expenditure of all of the funds deposited into the Restoration Fund during the preceding fiscal year.

“(2) CONTENTS.—The plan shall include an analysis of the cost-effectiveness of each expenditure.

“(h) Advisory Board.—

“(1) ESTABLISHMENT.—There is established the Restoration Fund Advisory Board (referred to in this section as the ‘Advisory Board’), which shall be composed of 14

**Commented [A6]:** The agencies are still reviewing the contents of this section. We anticipate the House will provide further suggestions, and we intend to seek the agencies' technical feedback on this language as modified by the House's suggestions.

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members appointed by the Secretary.

“(2) MEMBERSHIP.—

“(A) IN GENERAL.—The Secretary shall appoint members to the Advisory Board that represent the various Central Valley Project stakeholders, of whom—

“(i) 3 members shall be agricultural users of the Central Valley Project;

“(ii) 2 members shall be municipal and industrial users of the Central Valley Project;

“(iii) 3 members shall be power contractors of the Central Valley Project;

“(iv) 1 member shall be a representative of a federal wildlife refuge that contracts for Central Valley Project water supplies with the Bureau of Reclamation;

“(v) 1 member shall represent nongovernmental organizations involved in the protection and restoration of California fisheries;

“(vi) 1 member shall represent the commercial fishing industry;

“(vii) 1 member shall represent the recreational fishing industry; and

“(viii) 2 members shall be appointed at the discretion of the Secretary.

“(B) OBSERVER.—The Secretary and the Secretary of Commerce may each designate a representative to act as an observer of the Advisory Board.

“(C) CHAIRMAN.—The Secretary shall appoint 1 of the members described in subparagraph (A) to serve as Chairman of the Advisory Board.

“(3) TERMS.—The term of each member of the Advisory Board shall be 4 years.

“(4) DATE OF APPOINTMENTS.—The appointment of a member of the Panel shall be made not later than—

(A) the date that is 120 days after the date of enactment of this Act; or

(B) in the case of a vacancy on the Panel described in subsection (c)(2), the date that is 120 days after the date on which the vacancy occurs.

“(5) Vacancies.—

(A) IN GENERAL.—A vacancy on the Panel shall be filled in the manner in which the original appointment was made and shall be subject to any conditions that applied with respect to the original appointment.

(B) FILLING UNEXPIRED TERM.—An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

(C) EXPIRATION OF TERMS.—The term of any member shall not expire before the date on which the successor of the member takes office.

“(6) Removal —A Member of the Panel may be removed from office by the Secretary of the Interior.

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“(7) Federal Advisory Committee Act. —The Panel shall not be subject to the requirements of the Federal Advisory Committee Act.

“(8) DUTIES.—The duties of the Advisory Board are—

“(A) to meet not less frequently than semiannually to develop and make recommendations to the Secretary regarding priorities and spending levels on projects and programs carried out under this title;

“(B) to ensure that any advice given or recommendation made by the Advisory Board reflects the independent judgment of the Advisory Board;

“(C) not later than December 31, 2015, and annually thereafter, to submit to the Secretary and Congress the recommendations under subparagraph (A); and

“(D) not later than December 31, 2015, and biennially thereafter, to submit to Congress a report that details the progress made in achieving the actions required under section 3406.

“(9) ADMINISTRATION.—With the consent of the appropriate agency head, the Advisory Board may use the facilities and services of any Federal agency.”

“(10) Cooperation and Assistance.—

(A) Upon request of the Panel Chairperson for information or assistance to facilitate the carrying out of this section, the Secretary of the Interior shall promptly provide such information, unless otherwise prohibited by law.

(B) Space and Assistance.—The Secretary of the Interior shall provide the Panel with appropriate and adequate office space, together with such equipment, office supplies, and communications facilities and services as may be necessary for the operation of the Panel, and shall provide necessary maintenance services for such offices and the equipment and facilities located therein.

## SEC. 605. WATER OPERATIONS REVIEW PANEL.

(a) Establishment.—There is established a panel to be known as the “Water Operations Review Panel”.

(b) Membership.—

(1) COMPOSITION.—The Panel shall be composed of 5 members appointed by the Secretary of the Interior, in consultation with the Secretary of Commerce, of whom—

(A) 1 member shall be a former State elected official, who shall be the Chairperson of the Panel;

(B) 2 members shall be fisheries biologists, of whom—

(i) 1 member shall have expertise in Delta smelt; and

(ii) 1 member shall have expertise in salmonids; and

(C) 2 members shall be engineers with substantial expertise in water operations.

(2) RECOMMENDATIONS. —The Secretary of the Interior shall consider the recommendations

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(A) of the Governor of the State for the member appointed under subparagraph (1)(A);

(B) of the Director of the California Department of Water Resources for one of the members appointed under subparagraph (1)(C).

(3) PROHIBITION ON FEDERAL GOVERNMENT EMPLOYMENT.—For at least three years prior to appointment to the Panel, an individual appointed to the Panel under paragraph (1) shall not have been an employee of the Federal Government.

(4) DATE OF APPOINTMENTS.—The appointment of a member of the Panel shall be made not later than—

(A) the date that is 120 days after the date of enactment of this Act; or

(B) in the case of a vacancy on the Panel described in subsection (c)(2), the date that is 120 days after the date on which the vacancy occurs.

(c) Term; Vacancies.—

(1) TERMS.—A member of the Panel shall be appointed for a term of 3 years, except that, with respect to the members first appointed under this section—

(A) the Chairperson shall be appointed for a term of 3 years;

(B) of the members appointed under subsection (b)(1)(B)—

(i) 1 member shall be appointed for a term of 1 year; and

(iii) 1 member shall be appointed for a term of 2 years;

(C) of the members appointed under subsection (b)(1)(C)—

(i) 1 member shall be appointed for a term of 1 year; and

(ii) 1 member shall be appointed for a term of 2 years.

(2) VACANCIES.—

(A) IN GENERAL.—A vacancy on the Panel shall be filled in the manner in which the original appointment was made and shall be subject to any conditions that applied with respect to the original appointment.

(B) FILLING UNEXPIRED TERM.—An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

~~(3) EXPIRATION OF TERMS.—The term of any member shall not expire before the date on which the successor of the member takes office.~~

(d) Removal. —A Member of the Panel may be removed from office by the Secretary of the Interior.

(e) Federal Advisory Committee Act. —The Panel shall not be subject to the requirements of the Federal Advisory Committee Act.

(f) Duties.

(1) Annual Assessment and Report on Agencies' Operational Decisions under this Act.—

(A) IN GENERAL.—No later than November 30, 2015, and annually no later than

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November 30 thereafter, the Panel shall report an assessment of the agencies' operational decisions under this Act and recommendations for the prospective implementation of this Act to the following Congressional committees:

- (i) Senate Committee on Environment and Public Works;
- (ii) Senate Appropriations Subcommittee on Energy and Water Development;
- (iii) House Natural Resources Committee; and
- (iv) House Appropriations Subcommittee on Energy and Water Development.

(B) RETROSPECTIVE ASSESSMENT.—In making the retrospective assessment under paragraph (1), the Panel shall review and evaluate restrictions imposed under the smelt biological opinion and the salmonid biological opinion, and successor opinions, on operations of the Central Valley Project and State Water Project ~~the Director of the Fish and Wildlife Service, Administrator of NOAA Fisheries, and Commissioner of Reclamation's~~ —

(i) to determine the efficacy of those restrictions for the purpose of protecting listed species; and decisions in implementing this Act and other Federal laws applicable to the operations of the Central Valley Project and the State Water Project;

(ii) efforts to minimize water supply reductions for the Central Valley Project and State Water Project resulting from implementation of the smelt biological opinion and the salmonid biological opinion, and successor opinions, ~~disruptions while complying with the Endangered Species Act and this Act.~~

(C) PROSPECTIVE RECOMMENDATIONS.—The Panel shall make recommendations for prospective actions and potential actions warranting further study to better achieve the purposes of this Act and the Endangered Species Act as applied to the operations of the Central Valley Project and the State Water Project, including proposals—

(i) that in combination, both increase the survival of listed species and increase water supplies for the Central Valley Project and the State Water Project;

(ii) to increase the survival of listed fish species with little to no adverse effects on water supplies for the Central Valley Project and the State Water Project that would result from taking the specific proposed action recommended;

(iii) ~~iv~~ that respond to the annual Delta Science Program Independent Review Panel reports on the Long-term Operations Opinions.

(2) Five Year Assessment on Effectiveness of Provisions of Act and Recommended Legislative Changes.

(1) Upon request of the Panel Chairperson for information or assistance to facilitate the carrying out of this section, the Secretary of Commerce and the Secretary of the Interior shall promptly provide such information, unless otherwise prohibited by law.

(2) Space and Assistance.—The Secretary of the Interior shall provide the Panel with appropriate and adequate office space, together with such equipment, office supplies, and communications facilities and services as may be necessary for the operation of the Panel, and shall provide necessary maintenance services for such offices and the equipment and facilities located therein.

**SEC. 606. CONTINGENCY IN EVENT OF CONTINUING  
RESOLUTION FOR FISCAL YEAR 2015.**

The deadlines that apply to each respective Secretary, or agency, contained in sections 103(b), 103(d), 202, 204, and 205 shall be extended by the number of days that any resolution providing continuing appropriations for the Fish and Wildlife Service or NOAA Fisheries for fiscal year 2015 is in effect after January 1, 2015 if:

(1) such a resolution providing continuing appropriations for these agencies is enacted;

(2) the continuing resolution does not include funding for the agency actions prescribed in the sections of this Act specified above; and

(3) a funding shortfall remains for such agency actions after the Secretaries have consulted with the California Department of Water Resources, Central Valley Project and State Water Project contractors, and the Interagency Ecological Program.



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1 Water service and repayment contractors that receive water from the Delta Division or the San  
2 Luis Unit of the Central Valley Project shall be assessed, in addition to all other payments  
3 collected pursuant to section 3407 of the Central Valley Project Improvement Act (Public Law  
4 102–575; 106 Stat. 4     ), a per acre-foot surcharge, equal to 50% of the annual Restoration fund  
5 payments, for all Project water delivered during any year in which the allocation to such  
6 contractors is 50% to 74% and a per acre-foot surcharge, equal to 100% of the annual  
7 Restoration fund payments, delivered during any year in which the allocation to such contractors  
8 is 75% or greater, to be covered into the Restoration Fund.

**From:** Watts, John (Feinstein)  
**Sent:** Wednesday, October 8, 2014 3:01 PM  
**To:** Bernhardt, David L.  
**CC:** 'Tom Birmingham'  
**Subject:** FW: legal Delta

Can you include this is what you are working up?

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**From:** Poole, Melissa [mailto:MelissaP@paramountfarming.com]  
**Sent:** Wednesday, October 08, 2014 5:55 PM  
**To:** Watts, John (Feinstein)  
**Subject:** legal Delta

Hi John,

Thanks again for your time today. One cleanup to the language:

section 3 (1) - reference should be to section 12220 of the Water Code (not Public Resources Code). It is section 29722 of the Public Resources Code that defines the "Delta".

I'm working on some suggestions for expanding beyond the Delta to include other areas where delta smelt are located.

Melissa Poole  
Director of Government Affairs/Counsel  
Paramount Farming Company/Roll Law Group  
661.399.4456  
Direct: [REDACTED]  
Mobile: [REDACTED]  
[melissap@paramountfarming.com](mailto:melissap@paramountfarming.com)

**As of April 1, 2014 our new address will be 6801 E. Lerdo Highway, Shafter, CA 93263**

**From:** Tom Birmingham  
**Sent:** Wednesday, October 8, 2014 3:04 PM  
**To:** Watts, John (Feinstein)  
**CC:** Bernhardt, David L.  
**Subject:** Re: legal Delta

I will include.

Sent from my iPhone

On Oct 8, 2014, at 6:00 PM, "Watts, John (Feinstein)" <[John\\_Watts@feinstein.senate.gov](mailto:John_Watts@feinstein.senate.gov)> wrote:

Can you include this is what you are working up?

---

**From:** Poole, Melissa [<mailto:MelissaP@paramountfarming.com>]  
**Sent:** Wednesday, October 08, 2014 5:55 PM  
**To:** Watts, John (Feinstein)  
**Subject:** legal Delta

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Thanks again for your time today. One cleanup to the language:

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[melissap@paramountfarming.com](mailto:melissap@paramountfarming.com)

**As of April 1, 2014 our new address will be 6801 E. Lerdo Highway, Shafter,  
CA 93263**

**From:** Watts, John (Feinstein)  
**Sent:** Wednesday, October 8, 2014 3:17 PM  
**To:** 'Bernhardt, David L.'  
**CC:** 'Tom Birmingham'; Yeung, Felix (Feinstein); Peterson, James (Feinstein)  
**Subject:** RE: Leg counsel rewrite of draft language attached

PS Just to be clear, the redline shows the edits from the last draft Leg Counsel sent to us a few weeks ago, not from the draft we sent to them this week. There is no redline of their changes to our latest draft.

---

**From:** Watts, John (Feinstein)  
**Sent:** Wednesday, October 08, 2014 1:30 PM  
**To:** Bernhardt, David L.  
**Cc:** 'Tom Birmingham'; Yeung, Felix (Feinstein); Peterson, James (Feinstein)  
**Subject:** Leg counsel rewrite of draft language attached

David,

Can you look this over to see if any of the edits are significant? The redline document shows the edits.

Leg counsel did change the verb “will” in the MOU subsection to “shall,” as I expected. I think this is a good change to reduce ambiguity.

John

**From:** Nelson, Damon  
**Sent:** Thursday, October 9, 2014 9:08 AM  
**To:** Tom Birmingham; Bernhardt, David L.  
**Subject:** Most Recent Draft

Here is the most recent draft with additional changes. More to come, I'm sure.

**From:** Nelson, Damon  
**Sent:** Thursday, October 9, 2014 9:10 AM  
**To:** Tom Birmingham; Bernhardt, David L.  
**Subject:** RE: Most Recent Draft  
**Attachments:** Draft Edits for Water Bill.docx

[Now with the document](#)

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**From:** Nelson, Damon  
**Sent:** Thursday, October 09, 2014 12:08 PM  
**To:** 'Tom Birmingham'; Bernhardt, David L.  
**Subject:** Most Recent Draft

Here is the most recent draft with additional changes. More to come, I'm sure.

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Title: To provide drought relief in the State of California, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) Short Title.—This Act may be cited as the “California Drought Relief Act of 2014”.

(b) Table of Contents.—The table of contents of this Act is as follows:

Sec.1.Short title; table of contents.

Sec.2.Findings.

Sec.3.Definitions.

**TITLE I—ADJUSTING DELTA SMELT MANAGEMENT  
BASED ON INCREASED REAL-TIME MONITORING AND  
UPDATED SCIENCE**

Sec.101.Definitions.

Sec.102.Revise incidental take level calculation to reflect new science.

Sec.103.Factoring increased real-time monitoring and updated science into [d](#)Delta smelt management.

**TITLE II—ENSURING SALMONID MANAGEMENT IS  
RESPONSIVE TO NEW SCIENCE**

Sec.201.Definitions.

Sec.202.Required scientific studies.

Sec.203.Process for ensuring salmonid management is responsive to new science.

Sec.204.Pilot program to protect native anadromous fish in the Stanislaus River.

Sec.205.CALFED invasive species pilot projects in the Sacramento-San Joaquin Bay Delta and its tributaries.

Sec.206.Mark fishery and harvest management.

Sec.207.New actions to benefit Central Valley salmonids.

**TITLE III—OPERATIONAL FLEXIBILITY AND DROUGHT  
RELIEF**

Sec.301.Findings.

Sec.302.Definitions.

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- 1 Sec.303.Operational flexibility in times of drought.
- 2 Sec.304.Operation of cross-channel gates.
- 3 Sec.305.Flexibility for export/inflow ratio.
- 4 Sec.306.Emergency environmental reviews.
- 5 Sec.307.Prioritizing State revolving funds during droughts.
- 6 Sec.308.Increased flexibility for regular project operations.
- 7 Sec.309.Temporary operational flexibility for first few storms of 2015 water year.
- 8 Sec.310.Expediting water transfers.
- 9 Sec.311.Warren Act contracts. [PLACEHOLDER]
- 10 Sec.312.Additional Warren Act contracts. [PLACEHOLDER]

11 **TITLE IV—INCREASING WATER STORAGE**

- 12 Sec.401.Findings.
- 13 Sec.402.Calfed storage feasibility studies.
- 14 Sec.403.Water storage project construction.
- 15 Sec.404.Other storage feasibility studies.
- 16 Sec.405.Dam safety projects with increased storage component.
- 17 Sec.406.Updating water operations manuals for non-Federal projects.
- 18 Sec.407.Central Valley Project.

19 **TITLE V—WATER RIGHTS PROTECTIONS**

- 20 Sec.501.Protections for State water project contractors.
- 21 Sec.502.Area of origin protections.
- 22 Sec.503.No redirected adverse impacts.
- 23 Sec.504.Effect on State laws.

24 **TITLE VI—MISCELLANEOUS**

- 25 Sec.601.Authorized service area.
- 26 Sec.602.Rescheduled water.
- 27 Sec.603.Fisheries disaster declaration. [PLACEHOLDER]
- 28 Sec.604.Oversight board for Restoration Fund.
- 29 Sec.605.Water operations review panel.
- 30 Sec.606.Contingency in event of continuing resolution for fiscal year 2015.

31



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1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) As established in the Proclamation of a State of Emergency issued by the Governor of  
4 the State on January 17, 2014, the State is experiencing record dry conditions;

5 (2) Extremely dry conditions have persisted in the State since 2012, and the drought  
6 conditions are likely to persist into the future;

7 (3) As of September 2014, the National Weather Service’s forecast does not show a high  
8 likelihood of the State experiencing above-normal precipitation for the remainder of the  
9 calendar year;

10 (4) The water supplies of the State are at record-low levels, as indicated by the fact that  
11 all major Central Valley Project reservoir levels were at 20-35 percent of capacity as of  
12 September 25, 2014;

13 (5) The lack of precipitation has been a significant contributing factor to the 6,091 fires  
14 experienced in the State as of September 15, 2014, and which covered nearly 400,000 acres;

15 (6) According to a study released by the University of California, Davis in July 2014, the  
16 drought has led to the fallowing of 428,000 acres of farmland, loss of \$810 million in crop  
17 revenue, loss of \$203 million in dairy and other livestock value, and increased groundwater  
18 pumping costs by \$454 million. The statewide economic costs are estimated to be \$2.2  
19 billion, with over 17,000 seasonal and part-time agricultural jobs lost;

20 (7) CVPIA Level II water deliveries to refuges have also been reduced by 25% in the  
21 north of Delta region, and by 35% in the south of Delta region;

22 (8) Only one-sixth of the usual acres of rice fields are being flooded this fall, which leads  
23 to a significant decline in habitat for migratory birds and an increased risk of disease at the  
24 remaining wetlands due to overcrowding of such birds;

25 (9) The drought of 2013 through 2014 constitutes a serious emergency that poses  
26 immediate and severe risks to human life and safety and to the environment throughout the  
27 State;

28 (10) The serious emergency described in paragraph (4) requires—

29 (A) immediate and credible action that respects the complexity of the water system  
30 of the State and the importance of the water system to the entire State; and

31 (B) policies that do not pit stakeholders against one another, which history shows  
32 only leads to costly litigation that benefits no one and prevents any real solutions;

33 (11) Federal law (including regulations) directly authorizes expedited decisionmaking  
34 procedures and environmental and public review procedures to enable timely and  
35 appropriate implementation of actions to respond to the type and severity of the serious  
36 emergency described in paragraph (4); and

37 (12) The serious emergency described in paragraph (4) fully satisfies the conditions  
38 necessary for the exercise of emergency decisionmaking, analytical, and public review  
39 requirements under—

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(A) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(B) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(C) water control management procedures of the Corps of Engineers described in section 222.5 of title 33, Code of Federal Regulations (including successor regulations); and

(D) the Reclamation States Emergency Drought Relief Act of 1991 (Public Law 102–250; 106 Stat. 53).

(13) The ~~2008~~ smelt biological opinion and ~~2009~~ salmonid biological opinion contain reasonable and prudent alternatives to protect listed fish species from being jeopardized by operation of the Central Valley Project and State Water Project and to prevent adverse modification of designated critical habitat;

(14) The effect of those reasonable and prudent alternatives in the biological opinions may restrict the amount of water pumping that can occur to deliver water for agricultural, municipal, industrial, groundwater, and refuge uses in California;

(15) Data on the difference between water demand and reliable water supplies for various regions south of the ~~delta~~ Delta, including the San Joaquin Valley, indicate there is a significant annual gap between reliable water supplies to meet agricultural, municipal and industrial, groundwater, and refuges water needs within the South of Delta and Friant Division of the Central Valley Project and the State Water Project south of the Sacramento-San Joaquin River Delta and north of the Tehachapi mountain range and the demands of those areas. This gap varies depending on the methodology of the analysis performed, but can be represented in the following ways:

**Commented [A1]:** Agencies are verifying the accuracy of the facts within this finding.

(A) For Central Valley Project South-of-Delta water service contractors, if it is assumed that a water supply deficit is the difference in the amount of water available for allocation versus the maximum contract quantity, particularly in more recent years, then the water supply deficits that have developed from 1992 to 2014 as a result of changes besides natural variations in hydrology during this timeframe range between 720,000 and 1,100,000 acre-feet.

(B) For Central Valley Project and State Water Project water service contractors south of the Delta and north of the Tehachapi mountain range, if it is assumed that a water supply deficit is the difference between reliable water supplies, including maximum water contract deliveries, safe yield of groundwater, safe yield of local and surface supplies and long-term contracted water transfers, and water demands, including water demands from agriculture, municipal and industrial and refuge contractors, then the water supply deficit ranges between approximately 2,500,000 to 2,700,000 acre-feet.

(C) The California Water Plan evaluated outcomes under current conditions under 198 combinations of climate and growth scenarios, projecting a range of urban and agricultural reliability into the future. Reliability in this instance is defined as the percentage of years in which demand is sufficiently met by supply. Reliability across a range of futures within the San Joaquin Valley can be presented as:

(i) For the San Joaquin River Hydrologic Region, as defined in the California

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Water Plan:

(I) Urban supply reliability ranges between 90 and 100 percent, with a mean reliability across futures in the high 90<sup>th</sup> percentile; and

(II) Agricultural supply reliability ranges between 70 and 100 percent, with a mean reliability across futures in the mid-90<sup>th</sup> percentile.

(ii) For the Tulare Lake Hydrologic Region, as defined in the California Water Plan:

(I) Urban supply reliability ranges between 70 and 100 percent, with a mean reliability across futures in the mid-90<sup>th</sup> percentile; and

(II) Agricultural supply reliability ranges between 20 and 100 percent, with a mean reliability across futures in the low 70<sup>th</sup> percentile.

(16) Since the issuance of the biological opinions, recent studies have raised questions about the benefits to endangered salmonid populations from water pumping restrictions, including:

Commented [A2]: Agencies are assessing this finding.

(A) Expert panel reviews have concluded that instantaneous water velocities in the tidal Delta affect juvenile salmonids, not “tidally average” flows, as previously assumed. Based on instantaneous water velocity modeling, water exports have a much smaller area of effect than was previously believed;

(B) Tagging studies conducted since 1993 (representing more than 28 million fish) demonstrate that the proportion of Sacramento Basin origin Chinook salmon entrained into the pumping facilities (including pre-screen losses) are on average less than 1/10 of 1%; and

(C) Telemetry studies of Sacramento Basin and San Joaquin Basin origin juvenile Chinook salmon have not demonstrated any significant adverse effect from water exports on fish survival.

(17) Data of pumping activities at the Central Valley Project and State Water Project delta pumps identifies that, on average from Water Year 2009 to Water Year 2014, pumping activity takes 893 ΔDelta smelt annually with an authorized take level of 5,003 ΔDelta smelt annually according to the biological opinion issued December 15, 2008.

(18) It is worth exploring whether there is a way to implement the biological opinions that would preserve the protections afforded listed fish and simultaneously increase water deliveries to the Central Valley Project and State Water Project without weakening environmental laws or protections.

(19) In 2014, better information exists than was known in 2008 concerning conditions and operations that may or may not lead to high salvage events that jeopardize the fish populations, and what alternative management actions can be taken to avoid jeopardy.

(20) Alternative management strategies, such as trapping and barging juvenile salmon through the Delta, removing non-native species, enhancing habitat, and monitoring fish movement and location in real-time can contribute significantly to protecting and recovering these endangered fish species, and at potentially lower costs to water supplies.

(21) Resolution of fundamental policy questions concerning the extent to which

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application of the Endangered Species Act affects the operation of the Central Valley Project and State Water Project is the responsibility of Congress.

### SEC. 3. DEFINITIONS.

In this Act:

(1) DELTA.—The term “Delta” means the Sacramento-San Joaquin Delta and the Suisun Marsh, as defined in sections 12220 and 29101 of the California Public Resources Code.

(2) Export Pumping Rates.—The term “export pumping rates” means the rates of pumping at the W.C. “Bill” Jones Pumping Plant and the Harvey O. Banks Pumping Plant, in the southern Delta.

~~(3) JEOPARDY.—The term “jeopardy” means to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.~~

~~(34)~~ LISTED FISH SPECIES.—The term “listed fish species” means listed salmonid species and the Delta smelt.

~~(45)~~ LISTED SALMONID SPECIES.—The term “listed salmonid species” means natural origin steelhead, natural origin genetic spring run Chinook, and genetic winter run Chinook salmon.

~~(5) NEGATIVE IMPACT ON THE LONG-TERM SURVIVAL.—The term “negative impact on the long-term survival” means to reduce appreciably the likelihood of the survival of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.~~

(6) OMR.—The term “OMR” means the Old and Middle River in the Delta.

(7) OMR FLOW OF -5000 CFS.—The term “OMR flow of -5000 cfs” means Old and Middle River flow of negative 5,000 cubic feet per second as measured by—

(A) the smelt biological opinion; and

(B) the salmonid biological opinion.

(8) SALMONID BIOLOGICAL OPINION.—The term “salmonid biological opinion” means the biological opinion issued by the National Marine Fisheries Service on June 4, 2009.

(9) SMELT BIOLOGICAL OPINION.—The term “smelt biological opinion” means the biological opinion on the Long-Term Operational Criteria and Plan for coordination of the Central Valley Project and State Water Project issued by the United States Fish and Wildlife Service on December 15, 2008.

(10) STATE.—The term “State” means the State of California.

## TITLE I—ADJUSTING DELTA SMELT MANAGEMENT BASED ON INCREASED REAL-TIME MONITORING AND UPDATED SCIENCE

SEC. 101. DEFINITIONS.

In this title:

(1) DIRECTOR.—The term “Director” means the Director of the United States Fish and Wildlife Service.

(2) DELTA SMELT.—The term “~~d~~Delta smelt” means the fish species with the scientific name *Hypomesus transpacificus*.

(3) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

SEC. 102. REVISE INCIDENTAL TAKE LEVEL  
CALCULATION FOR DELTA SMELT TO REFLECT NEW  
SCIENCE.

No later than October 1, 2015, and at least every five years thereafter, the Director of Fish and Wildlife Service, in cooperation with other federal, state, and local agencies, shall use the best scientific and commercial data available to complete a review and, if warranted, a modification of the incidental take level in the ~~2008 delta~~ smelt biological opinion that takes into account, among other considerations,—

- (a) salvage information collected since at least 1993; available over at least 18 years;
- (b) updated or more recently developed statistical models;
- (c) updated scientific and commercial data; and
- (d) the most recent information regarding the environmental factors driving ~~d~~Delta smelt salvage.

SEC. 103. FACTORING INCREASED REAL-TIME  
MONITORING AND UPDATED SCIENCE INTO DELTA  
SMELT MANAGEMENT.

(a) In General.—The reasonable and prudent alternative described in the ~~2008 delta~~ smelt biological opinion, ~~as amended~~, and any successor opinions, shall be implemented consistent with current best scientific and commercial data available, ~~and implementation shall be adjusted accordingly as new scientific and commercial data are developed.~~

(b) Increased Monitoring to Inform Real-time Operations.— ~~Contingent upon funding,~~ ~~†~~The Secretary shall conduct additional surveys, on an annual basis at the appropriate time of the year based on environmental conditions, in collaboration with other ~~d~~Delta science interests.

- (1) In implementing this section, after seeking public input, the Secretary shall —

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(A) use the most appropriate survey methods for the detection of ~~Δ~~Delta smelt to determine the extent that adult ~~Δ~~Delta smelt are distributed in relation to certain levels of turbidity, or other environmental factors that may influence salvage rate; and

(B) use results from appropriate survey methods for the detection of ~~Δ~~Delta smelt to determine how the Central Valley Project and State Water Project may be operated more efficiently to minimize salvage while maximizing export pumping rates of water export without causing a negative impact on the long-term survival of the Delta smelt.

(2) During the period beginning on December 1, 2014 and ending March 31, 2015, and in each successive December through March period, if suspended sediment loads enter the Delta from the Sacramento River and the suspended sediment loads appear likely to raise turbidity levels in Old River north of the export pumps from values below 12 Nephelometric Turbidity Units (NTU) to values above 12 NTU, the Secretary shall—

(A) conduct daily monitoring using appropriate survey methods at locations including, but not limited to, the vicinity of Station 902 to determine the extent that adult Delta smelt are moving with turbidity toward the export pumps; and

(B) use results from the monitoring surveys referenced in paragraph (A) at locations including, but not limited to, the vicinity of Station 902 to determine how increased trawling can inform daily real-time Central Valley Project and State Water Project operations to minimize salvage while maximizing export pumping rates of water export without causing a negative impact on the long-term survival of the Delta smelt.

(c) Periodic Review of Monitoring.—Within twelve months of the date of enactment of this title, and at least once every 5 years thereafter, or sooner if the Secretary determines it is appropriate, the Secretary shall—

(1) evaluate whether the monitoring program under subsection (b), combined with other monitoring programs for the Delta, is providing sufficient data to inform Central Valley Project and State Water Project operations to minimize salvage while maximizing export pumping rates of water export without causing a negative impact on the long-term survival of the Delta smelt; and

(2) determine whether the monitoring efforts should be changed in the short- or long-term to provide more useful data.

(d) Delta Smelt Distribution Study.—

(1) IN GENERAL.— No later than January 1, 2016, in collaboration with the California Department of Fish and Wildlife, the California Department of Water Resources, public water agencies, and other interested entities,, shall implement new targeted sampling

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and monitoring specifically designed to understand ~~d~~Delta smelt abundance, distribution, and the types of habitat occupied by ~~d~~Delta smelt during all life stages.

(2) SAMPLING.—The Delta smelt distribution study shall, at a minimum—

(A) include recording water quality and tidal data;

(B) be designed to understand ~~d~~Delta smelt abundance, distribution, habitat use, and movements throughout the ~~Bay~~ Delta, Suisun Marsh, and other areas occupied by the Delta smelt during all seasons;

(C) consider areas not routinely sampled by existing monitoring programs, including wetland channels, near-shore water, depths below 35 feet, and shallow-water; and

(D) use the most biologically appropriate survey methods, including sampling gear, best suited to collect the most accurate data for the type of sampling or monitoring.

(e) Scientifically supported implementation of Old and Middle River flow requirements.—In implementing the provisions of the smelt biological opinion, or any successor biological opinion, ~~or pertaining to management of~~ reverse flow in the Old and Middle Rivers, the Secretary shall—

(1) consider the relevant provisions of the biological opinion or any successor biological opinion;

(2) manage reverse flow in Old and Middle Rivers as prescribed by the smelt biological opinion, or any successor biological opinion, to minimize water supply reductions for the Central Valley Project and the State Water Project;

~~(3) document in writing any significant facts about real-time conditions relevant to the determinations of reverse OMR flow rates less negative than -5000 cubic feet per second, including—~~

(A) ~~the findings in paragraph (3);~~

whether continued project operations over the remainder of the water year would exceed the incidental take level;

(~~E~~B) the potential effects of entrainment on subsequent smelt abundance, including consideration of the distribution of the population throughout the Delta,

(~~D~~C) the water temperature,

(~~E~~D) other factors relevant to the determination; and

(~~F~~E) whether any alternative measures could have a lesser water supply impact.

(~~5~~4) for any subsequent biological opinion, make the showing required in



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paragraph (3) for any determination to manage OMR reverse flow at rates less negative than the upper limit in the biological opinion if the upper limit in the biological opinion is more negative than -5000 cubic feet per second.

(f) Memorandum of Understanding. No later than December 1, 2014, the Commissioner and the Director will execute a Memorandum of Understanding (MOU) to ensure that the smelt biological opinion is implemented in a manner that minimizes water supply losses while complying with applicable laws and regulations. If that MOU alters any procedures set out in the biological opinion, there will be no need to reinitiate consultation if those changes do not have an adverse effect on listed species and the implementation of the MOU would not be a major change to implementation of the biological opinion. Any change to procedures that does not create a new adverse effect to listed species will not alter application of the take exemption in the incidental take statement in the biological opinion under the Endangered Species Act, section 7(o)(2).

(g) Calculation of Reverse Flow in OMR.-Within 90 days of the enactment of this title, the Secretary is directed, in consultation with the California Department of Water Resources to revise the method used to calculate reverse flow in Old and Middle Rivers for implementation of the reasonable and prudent alternatives in the smelt biological opinion and the salmonid biological opinion, and any succeeding biological opinions, for the purpose of increasing Central Valley Project and State Water Project water supplies. The method of calculating reverse flow in Old and Middle Rivers shall be reevaluated not less than every five years thereafter to achieve maximum export pumping rates within limits established by the smelt biological opinion, the salmonid biological opinion, and any succeeding biological opinions.

## SEC. 201. DEFINITIONS.

In this title:

(1) ASSISTANT ADMINISTRATOR.—The term “Assistant Administrator” means the Assistant Administrator of NOAA Fisheries.

(2) SECRETARY.—The term “Secretary” means the Secretary of Commerce.

## SEC. 202. REQUIRED SCIENTIFIC STUDIES.

(a) Trap and Barge Pilot Project to Increase Survivals Through the Delta.—The Assistant Administrator and the Commissioner shall, in collaboration with the U.S. Fish and Wildlife Service, the California Department of Fish and Wildlife and other interested parties, design, permit, implement and evaluate a pilot program to test the efficacy of an experimental trap and barge program to improve survival of juvenile salmonids emigrating from the San Joaquin watershed through the Delta, as further described below.

(1) Within 30 days of enactment, the Assistant Administrator shall convene a working group of the relevant agencies and other interested parties through which to develop and execute a plan for the design, budgeting, implementation and evaluation of such a pilot program, utilizing existing expertise on such trap and barge programs as may be available. Such plan shall detail a schedule and budget for the program, and identify the responsible



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parties for each element of the program.

(2) The Assistant Administrator shall provide an opportunity for public review and comment on the pilot program and also simultaneously seek an expeditious independent peer review of the program to improve its rigor and likelihood of success.

(3) Upon completion of (2), above, the Assistant Administrator shall complete the necessary design and evaluations of the pilot program and seek such ~~authorizations and permits~~ or other regulatory authorizations as may be required under federal law for its prompt implementation and evaluation by the Assistant Administrator, the Commissioner or such other parties as they determine most suitable.

~~(4) Subject to the availability of funding,~~ The Assistant Administrator and the Commissioner shall seek to commence implementation of the pilot program in 2015 or as soon thereafter as is possible, and shall conduct such pilot for such period of time as needed to evaluate the efficacy of the program to improve survival~~s~~ across a range of environmental conditions.

(5) The Assistant Administrator and the Commissioner shall jointly report annually to the Senate Environment and Public Works Committee and the House Committee on Natural Resources their progress in implementing this section, estimated survival rates through the Delta for both juvenile salmonids that were barged through the Delta and those that were not barged, and if survival rates are significantly higher for barged fish as compared to other outmigrating smolts, the Assistant Administrator's and Commissioner's recommendations regarding broadening the pilot program and any relevant recommendations pursuant to section 203.

(b) Tagging studies.

(1) IN GENERAL.—The Assistant Administrator, in collaboration with other Delta science partners, shall implement tagging studies, including acoustic telemetry and PIT tagging studies as appropriate, wherein habitat, predators, flow conditions, or other factors are experimentally altered and the behavior and survival of tagged juvenile salmonids are observed. Studies may also be conducted to aid in the understanding of Chinook salmon and steelhead abundance, distribution, and survival.

(2) SAMPLING.—The sampling—

(A) shall include recording water quality and tidal data;

(B) will be designed to aid in the understanding of salmonid abundance, distribution, and movements throughout the Bay Delta, including estimates of through Delta survival from Knights Landing or from Mossdale to Chipps Island; and

(C) will supplement, not supplant, ongoing acoustic tag and coded wire survival studies in the San Joaquin and Sacramento Rivers which the Assistant Administrator determines are crucial for trend monitoring.

**SEC. 203. PROCESS FOR ENSURING SALMONID  
MANAGEMENT IS RESPONSIVE TO NEW SCIENCE.**

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(a) General directive. The reasonable and prudent alternative described in the salmonid biological opinion allows for and anticipates adjustments in operating criteria to reflect the best scientific and commercial data currently available, and authorizes efforts to test and evaluate improvements in operations that will meet applicable regulatory requirements and enable improvements in water supply reliability. The Commissioner and the Assistant Administrator are hereby directed to utilize these authorities fully as described below.

(b) Annual reviews of certain operating criteria. No later than December 31, 2015, and at least annually thereafter,

(1) The Commissioner, in consultation with and with the assistance of the Assistant Administrator shall ~~commence annual efforts to~~ examine and identify adjustments to the initiation of Action IV.2.3 pertaining to negative OMR flows, subject to paragraph (5).

(2) The Commissioner, in consultation with and with the assistance of the Assistant Administrator, shall examine and identify adjustments in the timing, triggers or other operational details relating to the implementation of pumping restrictions in Action IV.2.1 pertaining to the inflow to export requirements, subject to paragraph (5).

(3) Pursuant to the consultation and assessments carried out under paragraphs (1) and (2) of this subsection, the Commissioner shall make recommendations to the Assistant Administrator on adjustments that, in the exercise of the adaptive management provisions of the salmonid biological opinion, ~~can improve water supplies will reduce water supply impacts of the salmonid biological opinion on the Central Valley Project and the California State Water Project~~ and are consistent with the requirements of applicable law and as further described in subsection (c).

(4) The Commissioner shall implement those adjustments for which the conditions under subsection (c) are met.

(5) The Assistant Administrator and the Commissioner shall review and identify adjustments to water supply restrictions in any successor biological opinion to the salmonid biological opinion, applying the provisions of this section to those water supply restrictions where there are references to Actions IV.2.1 and IV.2.3.

(c) Adjustments that shall be implemented. ~~In receiving reviewing~~ the recommendations under subsection (b), the Assistant Administrator shall evaluate the effects of the recommended adjustments on listed species and shall adjustments for which:

(1) the net effect on listed species is equivalent to those of the underlying criteria in the salmonid biological opinion, taking into account whatever actions or measures may be implemented in conjunction with the adjustments to mitigate its effects; and

(2) the effects of the adjustment fall within the incidental take authorizations.

(d) ~~Taking into account offsetting species survival benefits from other measures.~~

When examining and identifying opportunities to offset the potential adverse effect of adjustments to operating criteria, the Commissioner and the Assistant Administrator shall take into account the potential species salmonid-survival improvements that are likely to result from other measures which, if implemented in conjunction with the adjustments, would offset ~~the~~ adverse effects, if any, of the adjustments. When ~~considering evaluating~~ offsetting measures, the Commissioner and the Assistant Administrator shall consider the

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type, timing and nature of the adverse effects, if any, to specific species and ensure that the measures provide equivalent overall benefits to the listed species in the aggregate, as long as the change will not cause a negative impact on the long-term survival of a listed salmonid species.

~~(1) The offsetting measures could include actions implemented with the support of a substantial contribution from water districts that would benefit from the adjustments.~~

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- (e) Framework for examining opportunities to minimize or offset the potential adverse effect of adjustments to operating criteria.—Not later than December 31, 2015, and every five years thereafter, the Assistant Administrator shall, in collaboration with the Director of the California Department of Fish and Wildlife, based on the best scientific and commercial data available and for each listed salmonid species, issue estimates of the increase in through-Delta survival the Secretary expects to be achieved—

(1) ~~through with~~ restrictions on export ~~pumping rates~~ restrictions as specified by Action IV.2.3 as compared to limiting OMR flow to a fixed rate of -5000 cubic feet per second within the time period Action IV.2.3 is applicable, based on a given rate of San Joaquin River inflow to the Delta and holding other relevant factors constant;

(2) ~~through with~~ San Joaquin River inflow to export restrictions on export pumping rates specified within Action IV.2.1 as compared to the ~~export~~ restrictions in the April/May period imposed by the State Water Resources Control Board decision D-1641, based on a given rate of San Joaquin River inflow to the Delta and holding other relevant factors constant;

(3) through a trap and barge program based on the experience of other systems to the extent they are comparable, and the study described in section 202, as that information becomes available;

(4) through physical habitat restoration improvements;

(5) through predation control programs;

(6) through the installation of temporary barriers, the management of Cross Channel Gates operations, and other projects affecting flow in the Delta;

(7) ~~through by~~ salvaging fish that may be entrained near the entrance to Clifton Court Forebay; and

(8) ~~through by~~ any other management measures that may provide equivalent or better protections benefits for listed species ~~with improvements to water supplies while maximizing export pumping rates without causing a negative impact on the long-term survival of a listed salmonid species~~.

- (f) Survival estimates ~~to be quantitative to the maximum extent feasible~~.

(1) ~~To the maximum extent feasible, the~~ Assistant Administrator shall make ~~these quantitative estimates of survival, and determinations quantitatively to the maximum extent feasible,~~ such as a range of percentage increases in through-Delta survival that could result from the management measures, and if the scientific information is lacking for quantitative estimates, shall do so on qualitative terms based upon the best available science.

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(2) If the Assistant Administrator provides qualitative survival estimates for a species resulting from one or more management measures, the Secretary shall, to the maximum extent feasible, rank the management measures described in subsection (e) in terms of their most likely expected contribution to increased through-Delta survival relative to the other measures.

(3) If at the time the Assistant Administrator conducts the analysis under subsection (b), the Secretary has not issued an the estimates of increased through-Delta survival benefits from different management measures pursuant to subsection (e), the Secretary shall compare the protections benefits to the species from different management measures based on the best scientific and commercial data available at the time.

(g) Comparison of adverse consequences for alternative management measures of equal protection for a species benefit to the salmon.

(1) For the purposes of this subsection—

(A) The alternative management measure or combination of alternative management measures identified in paragraph (2) shall be known as the “equivalent alternative measure.”

(B) The existing measure or measures identified in subparagraphs (2)(A),(B),(C), or (D) shall be known as the “equivalent existing measure.”

(C) An “equivalent increase in through-Delta survival rates for listed salmonid species” shall mean an increase in through-Delta survival rates that is equivalent when considering the change in through-Delta survival rates for the listed salmonid species in the aggregate, and not the same change for each individual species, as long as the change in survival rates will not cause a negative impact on the long-term survival of a listed salmonid species.

(2) As part of the reviews of operating criteria pursuant to subsection (b), the Assistant Administrator shall determine whether any alternative management measures or combination of alternative management measures listed in subsection (e)(3) through (8) would provide an increase in through-Delta survival rates for listed salmonid species that is equivalent to the increase in through-Delta survival rates for listed salmonid species from the following:

(A) through restrictions on export pumping rates with export restrictions as specified by Action IV.2.3, as compared to limiting OMR flow to a fixed rate of -5000 cubic feet per second within the time period Action IV.2.3 is applicable;

(B) through restrictions on export pumping rates with export restrictions as specified by Action IV.2.3, as compared to a modification of Action IV.2.3 that would provide additional water supplies, other than that described in subparagraph (A);

(C) through with San Joaquin River inflow to export restrictions on export pumping rates specified within Action IV.2.1, as compared to the export restrictions in the April/May period imposed by the State Water Resources Control Board decision D-1641, or

(D) through with San Joaquin River inflow to export restrictions on export pumping rates specified within Action IV.2.1, as compared to a modification of Action IV.2.1

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that would reduce water supply impacts of the salmonid biological opinion on the Central Valley Project and the California State Water Project, other than that described in subparagraph (C).

(3) If the Assistant Administrator identifies an equivalent alternative measure pursuant to paragraph (2), the Assistant Administrator shall determine whether

(A) it is technically feasible and within federal jurisdiction to implement the equivalent alternative measure, and

(B) the adverse consequences of doing so are less than the adverse consequences of the equivalent existing measure, including a concise evaluation of the adverse consequences to other affected interests.

(4) If the Assistant Administrator makes the findings in subparagraph (3)(A) and (B), the Assistant Administrator and the Commissioner shall adjust the operating criteria in the salmonid biological opinion pursuant to this subsection to implement the equivalent alternative measure in place of the equivalent existing measure in order to increase export rates of pumping water supplies to the greatest extent possible while maintaining a net combined effect of equivalent through-Delta survival rates for the listed salmonid species.

(h) Tracking adverse effects beyond the range of effects accounted for in the salmonid biological opinion and coordinated operation with the smelt biological opinion.

(1) Among the adjustments to the operational criteria considered through the adaptive management process under this section, the Assistant Administrator and the Commissioner shall

(A) Evaluate the effects on listed salmonid species and water supply of the potential adjustment to operational criteria described in subparagraph (B); and

(B) Consider requiring that before some or all of the provisions of Actions IV.2.1. or IV.2.3 are imposed in any specific instance, the Assistant Administrator show that the implementation of these provisions in that specific instance is necessary to avoid a negative impact on the long-term survival of a listed salmonid species, additional adverse effects upon listed salmonid species beyond the range of effects analyzed and accounted for in the salmonid biological opinion

(2) The Assistant Administrator, the Director and the Commissioner, in coordination with State officials as appropriate, shall establish operational criteria to coordinate management of OMR flows under the smelt and salmonid biological opinions, in order to take advantage of opportunities to provide additional water supplies from the coordinated implementation of the biological opinions.

(i) Real-Time Monitoring and Management. The Assistant Administrator and the Commissioner shall, through the NMFS adaptive management salmonid biological opinion provisions, analyze whether date-certain triggers that limit OMR reverse flow to -5000 cubic feet per second could be adjusted to instead use real-time migration information on salmonids. If the analysis shows that the use of real-time information to trigger OMR flow limitations would improve water supply without causing significant adverse effects to Winter-run Chinook salmon, then such real-time management triggers shall be implemented.

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**SEC. 204. PILOT PROGRAM TO PROTECT NATIVE ANADROMOUS FISH IN THE STANISLAUS RIVER.**

(a) Establishment of Non-native Predator Fish Removal Program. The Assistant Administrator, in consultation with the United States Fish and Wildlife Service and the California Department of Fish and Wildlife, shall develop and conduct a pilot non-native predator fish removal program to remove non-native striped bass, smallmouth bass, largemouth bass, black bass, and other non-native predator fishes in and around the Bay Delta, including the Stanislaus River, contingent upon funding. The pilot program shall--

(1) be scientifically based;

(2) include methods to quantify the number and size of predator fishes removed each year, the impact of such removal on the overall abundance of predator fishes, and the impact of such removal on the populations of juvenile anadromous fish found in the Stanislaus River and elsewhere by, among other things, evaluating the number of juvenile anadromous fish that migrate past the rotary screw trap located at Caswell;

(3) among other methods, use wire fyke trapping, portable resistance board weirs, and boat electrofishing, which are among the most effective predator collection techniques that minimize effects to native anadromous fish;

(4) be developed, including the application for all necessary scientific research and species enhancement permits under section 10(a)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)), for the performance of the pilot program, not later than 6 months after the date of the enactment of this Act;

(5) be implemented on the first business day of the calendar year following the issuance of all necessary scientific research, species enhancement permits, and funding needed to begin the pilot program; and

(6) be implemented for a period of seven consecutive calendar years.

(b) Management. The Assistant Administrator is authorized and encouraged to enter into agreements with interested local water districts to jointly develop, implement and evaluate this pilot program. Such parties shall work collaboratively to ensure the performance of the pilot program, and shall discuss and agree upon, among other things, changes in the structure, management, personnel, techniques, strategy, data collection, reporting and conduct of the pilot program.

(c) Conduct.—

(1) IN GENERAL.—By agreement between the Assistant Administrator and the participating districts, the pilot program may be conducted by their own personnel, qualified private contractors hired by the districts, personnel of, on loan to, or otherwise assigned to NOAA Fisheries, or a combination thereof.

(2) PARTICIPATION BY NOAA FISHERIES.—In the event the districts elect to conduct the program using their own personnel or qualified private contractors hired by them, the Commissioner has the option to assign an employee of, on loan to, or otherwise assigned to NOAA Fisheries, to be present for all activities performed in the field. Such presence shall

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ensure compliance with the agreed upon elements specified in subsection (b). The districts shall pay 100 percent of the cost of such participation as specified in subsection (d).

(3) TIMING OF ELECTION.—The districts shall notify the Assistant Administrator of their election on or before October 15 of each calendar year of the pilot program, which election shall apply to the work performed in the subsequent calendar year.

(d) Funding.—

(1) ANNUAL FUNDING.—The Commissioner, the Assistant Administrator, and the participating districts shall develop a budget and funding plan for the pilot project that will allocate costs appropriately amongst the participating entities. On or before December 1 of each year of the pilot program, the Commissioner shall submit to the districts an estimate of the cost to be incurred by the Bureau of Reclamation in the following calendar year, if any, including the cost of any data collection and posting under subsection (e). If an amount equal to the estimate is not provided to the Assistant Administrator by the districts on or before December 31 of each year, (a) NOAA Fisheries shall have no obligation to conduct the pilot program activities otherwise scheduled, and (b) the districts shall be prohibited from conducting any aspect of the pilot program, until full payment is made by the districts.

(2) ACCOUNTING.—On or before September 1 of each calendar year, the Assistant Administrator shall provide an accounting of the prior calendar year's expenses to the participating entities. If the estimate paid by the districts was less than the actual costs incurred by NOAA Fisheries, the districts shall have until September 30 of that calendar year to pay the difference to the fund identified by the Assistant Administrator in subsection (d)(1), or NOAA Fisheries shall have no obligation to conduct the pilot program activities otherwise scheduled. If the estimate paid by the districts was greater than the actual costs incurred by NOAA Fisheries, then a credit shall be provided to the districts, which shall be deducted from the estimate payment the districts must make for the work performed by NOAA Fisheries, if any, in the next calendar year.

(e) Reporting and Evaluation.—

(1) IN GENERAL.—On or before the 15th day of each month, the Assistant Administrator shall post on the website of NOAA Fisheries a tabular summary of the raw data collected in the prior month.

(2) REPORT.—On or before June 30 of the calendar year following the completion of the program, the Assistant Administrator and districts shall jointly submit a report for peer review that—

(A) discusses the findings and conclusions of the pilot program;

(B) synthesizes the data collected under paragraph (1); and

(C) makes recommendations for further study and action.

(f) Permits Process.—

(1) Not later than one year after filing of an application by the Assistant Administrator and the districts, the Secretary of the Interior, the Secretary of Commerce, or both, as appropriate, shall issue all necessary scientific research and species enhancement permits

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under section 10(a)(1) of the Endangered Species Act (16 U.S.C. 153(9)(a)(1)), for the performance of the pilot program.

(2) All permits issued shall be in the name of NOAA Fisheries and the participating districts.

(3) Districts may delegate the authority to administer the permit authority to any qualified private contractor retained in accordance with subsection (c).

(g) Emergency Environmental Reviews.—To expedite this environmentally beneficial program for the conservation of threatened and endangered species, the Secretary of the Interior shall consult with the Council on Environmental Quality in accordance with Section 1506.11 of title 40, Code of Federal Regulations (including successor regulations) to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 for this section.

(h) Definitions.—For the purposes of this section:

(1) COMMISSIONER.—The term ‘Commissioner’ means the Commissioner of the Bureau of Reclamation.

(2) DISTRICTS.—The term ‘districts’ means the Oakdale Irrigation District and the South San Joaquin Irrigation District.

(3) PILOT PROGRAM.—The term ‘program’ means the pilot non-native predator removal program established under this section.

(i) Sunset.—The authorities provided under this section shall expire seven years after the implementation of the pilot program.

**SEC. 205. CALFED INVASIVE SPECIES PILOT PROJECTS  
IN THE SACRAMENTO-SAN JOAQUIN BAY DELTA AND  
ITS TRIBUTARIES.**

(a) FINDINGS.—Congress finds that—

(1) The Sacramento-San Joaquin Bay Delta and its Tributaries-

(A) is one of the largest and most diverse estuaries in the United States,

(B) is a natural treasure and a vital link in California’s water system, and

(C) has native biodiversity important to the ecological and economic systems of California, including water deliveries to agriculture, municipalities and to the environment and fisheries industries, and

(D) has river tributaries important for rearing of salmon and steelhead smolts which experience a high level of predation from non-native species.

(2) Past, present and future introductions of invasive species are and will be a major factor in the decline of native pelagic and anadromous endangered or threatened species in the Sacramento–San Joaquin Bay Delta and its tributaries.

(3) More than 250 nonnative aquatic and plant species have been introduced into the Delta and its tributaries; of these, at least 185 species have become established and have altered the Sacramento-San Joaquin Bay Delta watershed’s ecosystem.



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(4) The Bay Delta Conservation Plan, the Recovery Plan for the Evolutionarily Significant Units of Sacramento River Winter-run Chinook Salmon and Central Valley Spring-run Chinook Salmon and the Distinct Population Segment of the Central Valley Steelhead, the Recovery Plan for the Sacramento-San Joaquin Delta Native Fishes, and the multiple 5 year reviews of those plans all highlight that introduced nonnative invasive species are a significant factor in the decline of native fish species. These nonnative species, which include invasive aquatic vegetation, predators, and competitors, directly or indirectly cause biological stress for pelagic and anadromous endangered or threatened fish species in the Sacramento-San Joaquin Bay-Delta and its tributaries.

(5) If threats by nonnative species to native fish species are not addressed, there is a probability that native species of the Sacramento-San Joaquin Bay-Delta watershed's pelagic and anadromous community will go extinct.

(6) The CALFED legislation (Public Law 108-361) authorized a program to prevent, control, and eradicate invasive species, but it has not been implemented to date.

(7) A focused pilot program needs to be conducted within the Delta and river tributaries to reduce threats to native listed species by nonnative species. Reducing nonnative stressors on native listed species will contribute to both native listed species recovery and lowering the impact on downstream water users as those native listed species recover.

(b) PILOT PROJECTS TO IMPLEMENT CALFED INVASIVE SPECIES PROGRAM.

(1) Not later than January 1, 2016, the Secretary of the Interior, in collaboration with the Secretary of Commerce and the Director of the California Department of Fish and Wildlife, shall begin pilot projects to implement the invasive species program, including prevention, control and eradication authorized pursuant to Section 103(d)(6)(A)(iv) of Public Law 108-361. The pilot projects shall:

(A) seek to reduce invasive aquatic vegetation, predators, and other competitors which are major factors in the decline of native listed pelagic and anadromous species that occupy the Sacramento and San Joaquin Rivers and their tributaries and the Sacramento-San Joaquin Bay-Delta; and

(B) address how to remove, reduce, or control the effects of species including: Asiatic clams, silversides, gobies, Brazilian water weed, largemouth bass, smallmouth bass, striped bass, crappie, bluegill, white and channel catfish, and brown bullheads.

(2) The Secretary of the Interior's efforts shall consist of the following phases:

(A) Phase 1. The Secretary of the Interior shall convene a panel of experts, including experts recommended by the State of California, to:

- (i) Identify the non-native species having the greatest impact on the viability of native pelagic and anadromous native listed species; and
- (ii) Identify the non-native species for which actions to reduce or control the population is determined to be possible; and
- (iii) Design a study to reduce the non-native species identified in clauses (i) and (ii) and prepare a cost estimate to implement this study.

(B) Phase 2. The Secretary of the Interior shall test the general viability of nonnative reduction methods, including either direct predator removal or alteration of channel

**Commented [A3]:** Awaiting feedback from the agencies on whether the experts in an existing predation workshop would address the items outlined in clauses (i) through (iii) of subparagraph (A) in the proposed text.

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conditions, or some combination thereof, through pilot projects at multiple sites in addition to the projects on the Stanislaus River pursuant to Section 204, including known hotspots of predator aggregation or activity, such as:

- (i) Clifton Court Forebay,
- (ii) Central Valley Project intakes,
- (iii) Head of Old River,
- (iv) Georgiana Slough,
- (v) Old and Middle Rivers,
- (vi) Franks Tract,
- (vii) Paintersville Bridge,
- (viii) individual river tributaries important for wild populations of anadromous species listed as threatened or endangered under the Endangered Species Act of 1973,
- (ix) Human-made submerged structures, and
- (x) Salvage release sites.

(C) Phase 3. If it is feasible to do so, the Secretary of the Interior shall implement nonnative reduction methods at a larger number of sites, incorporating information learned during the first and second phase.

(3) The Secretary of the Interior shall collect data associated with the implementation of the projects above, and shall specifically collect data on the impact on

(A) pelagic and anadromous species listed as threatened or endangered under the Endangered Species Act of 1973,

(B) water quality, and

(C) water supply.

(4) After assessing the data described in subparagraph (2), the Secretary of the Interior, in collaboration with the Secretary of Commerce and the Director of the California Department of Fish and Wildlife, shall, if appropriate, annually recommend revisions to the reasonable and prudent alternatives contained in the salmonid biological opinion and the smelt biological opinion, or other administrative federal requirements governing the operation of the Central Valley Project and the State Water Project, that are likely to produce additional fishery, water quality, and water supply benefits.

(c) IMPLEMENTATION. The Secretary of the Interior shall implement the CALFED program described in subpart (b) for at least a period of seven consecutive years beginning on the date of implementation.

(d) REPORTING REQUIREMENTS. The Secretary of the Interior shall provide reports to the Senate Committee on Environment and Public Works and the House Committee on Natural Resources on the following:

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(1) No later than January 1, 2016, a description of the projects described in subpart (b), including the application for all necessary scientific research and species enhancement permits under section 10(a) (1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)), and for the performance of the CALFED invasive species Program.

(2) Upon the completion of Phase 1 as described in subsection (b)(1)(A), a report describing its implementation and cost effectiveness.

(3) Two years after the project begins, a report describing the progress of the eradication of the nonnative species in the Sacramento-San Joaquin Bay-Delta and its tributaries and how such efforts have helped the Recovery Plans for endangered and threatened Anadromous and Pelagic Species in the Sacramento-San Joaquin Bay-Delta watershed and the associated cost effectiveness of each control measure.

(4) After the pilot projects are complete, a report describing the results of the program, including recommendations on whether the program should be continued, how the program may be taken to full scale in the most cost effective manner, and how a mitigation program for the Central Valley Project allowable under section 10(a)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)) could be implemented.

(e) EMERGENCY ENVIRONMENTAL REVIEWS. To expedite this environmentally beneficial program for the conservation of threatened and endangered species, the Secretary of the Interior shall consult with the Council on Environmental Quality in accordance with section 1506.11 of title 40, Code of Federal Regulations (including successor regulations) to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 for this program.

## **SEC. 206. MARK FISHERY AND HARVEST MANAGEMENT.**

To minimize the impact of harvest and project operations on salmonids, contribute to recovery of stocks of endangered or threatened species, improve management of fish stocks of both hatchery and natural origins, and to minimize risk of a natural origin fall Chinook listing under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), the Assistant Administrator shall

(1) in partnership with the Director of the California Department of Fish and Wildlife and persons responsible for funding Central Valley hatcheries, convene an independent science panel within 60 days of enactment of this Act to follow up on the 2012 California Hatchery Scientific Review Group's recommendations by providing an assessment of costs and benefits associated with marking, with tagging, and with a program that combines in some way marking and tagging Central Valley hatchery produced fall Chinook. The Assistant Administrator shall ensure that the independent science panel—

(A) Includes an appropriate number of scientific experts as determined and appointed by the Assistant Administrator, and an equal number of scientific experts selected by entities responsible for funding California salmon mitigation hatcheries;

(B) Considers and gives equal weight to both inland and ocean monitoring and management needs, including harvest.

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(C) Completes the review by December 31, 2015.

(2) assess and implement harvest management strategies by October 1, 2018 to provide better protection for sensitive Chinook stocks while still allowing for harvest of hatchery fall Chinook.

**SEC. 207. NEW ACTIONS TO BENEFIT CENTRAL VALLEY SALMONIDS.**

Not later than March 1, 2016, under similar terms and conditions as successful United States Fish and Wildlife Service programs on Clear Creek and Battle Creek, the Director, in collaboration with the Director of the California Department of Fish and Wildlife, the Commissioner of the Bureau of Reclamation, or both, shall issue necessary permits and otherwise facilitate the deployment of temporary in-river structures—

(1) to protect and grow natural origin spring Chinook populations by blocking access to hatchery origin fall Chinook; and

(2) to prevent hatchery origin Chinook salmon and steelhead from reaching spawning grounds where the species will compete for spawning with natural origin fish listed under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

**TITLE III—OPERATIONAL FLEXIBILITY AND DROUGHT RELIEF**

**SEC. 301. FINDINGS.**

Congress finds that—

(1) Based on the congressional findings in Sec. 2 of this Act, it is appropriate and necessary for federal agencies to exercise the maximum amount of flexibility provided to them under the applicable laws and regulations to maximize delivery of water supplies while providing the same or better levels of protection for species.

**SEC. 302. DEFINITIONS.**

In this title:

(1) **CENTRAL VALLEY PROJECT.**—The term “Central Valley Project” has the meaning given the term in section 3403 of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4707).

(2) **KLAMATH PROJECT.**—The term “Klamath Project” means the Bureau of Reclamation project in the States of California and Oregon, as authorized under the Act of June 17, 1902 (32 Stat. 388, chapter 1093).

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(3) RECLAMATION PROJECT.—The term “Reclamation Project” means a project constructed pursuant to the authorities of the reclamation laws and whose facilities are wholly or partially located in the State.

(4) SECRETARIES.—The term “Secretaries” means—

(A) the Administrator of the Environmental Protection Agency;

(B) the Secretary of Agriculture;

(C) the Secretary of Commerce; and

(D) the Secretary of the Interior.

(5) STATE WATER PROJECT.—The term “State Water Project” means the water project described by California Water Code section 11550 et seq., and operated by the California Department of Water Resources.

### SEC. 303. OPERATIONAL FLEXIBILITY IN TIMES OF DROUGHT.

(a) Water Supplies.—

(1) IN GENERAL.—In response to a declaration of a state of drought emergency by the Governor of California and for the period of time such a drought declaration remains in effect, the Secretaries shall provide the maximum quantity of water supplies practicable to Central Valley Project agricultural, municipal and industrial, and refuge service and repayment contractors, State Water Project contractors, and any other tribe, locality or municipality in the State, by approving, consistent with applicable laws (including regulations), projects and operations to provide additional water supplies as quickly as practicable based on available information to address the emergency conditions.

(2) APPLICATION.—Paragraph (1) applies to projects or operations involving the Klamath Project if the projects or operations would benefit Federal water contractors in the State.

(b) Administration.—In carrying out subsection (a), the Secretaries shall, consistent with applicable laws (including regulations)—

(1) issue all necessary permit decisions under the authority of the Secretaries not later than 30 days after the date on which the Secretaries receive a completed application from the State to place and use temporary barriers or operable gates in Delta channels to improve water quantity and quality for the State Water Project and the Central Valley Project south of Delta water contractors and other water users, on the condition that the barriers or operable gates—

(A) provide benefits for species protection and in-Delta water user water quality; and

(B) are designed so that formal consultations under section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) are not necessary;

(2) require the Director of the United States Fish and Wildlife Service and the Commissioner of Reclamation—

(A) to complete, not later than 30 days after the date on which the Director or the

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Commissioner receives a complete written request for water transfer associated with voluntarily following nonpermanent crops in the State, all requirements under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) necessary to make final permit decisions on the request; and

(B) to grant any water transfer request described in subparagraph (A) to maximize the quantity of water supplies available for nonhabitat uses, on the condition that the following and associated water transfer are in compliance with applicable Federal laws (including regulations);

(3) adopt a 1:1 inflow to export ratio, ~~for the increment of increased flow of the San Joaquin River,~~ as measured as a 3-day running average at Vernalis during the period beginning on April 1, and ending on May 31, ~~absent a determination in writing that a more restrictive inflow to export ratio is required to avoid a negative impact on the long-term survival of a listed salmonid species; provided that the a 1:1 inflow to export ratio shall apply for the increment of increased flow of the San Joaquin River~~ resulting from the voluntary ~~sale, transfers, or and exchanges~~ of water ~~from agencies with rights to divert water from the San Joaquin River or its tributaries, supplies, on the condition that a proposed transfer or exchange under this paragraph may only proceed if the Secretary of the Interior determines that the environmental effects of the proposed transfer or exchange are consistent with effects permissible under applicable law (including regulations), and provided tht~~ Delta conditions are suitable to allow movement of the ~~acquired, transfer transferred, or exchanged~~ water through the Delta consistent with ~~the Central Valley Project's and the State Water Project's Reclamation's~~ permitted water rights; and

(4) Provide additional priority for eligible WaterSMART projects that address drought conditions including projects that—

(A) provide emergency drinking and municipal water supplies to localities in a quantity necessary to meet minimum public health and safety needs;

(B) prevent the loss of permanent crops;

(C) minimize economic losses resulting from drought conditions; or

(D) provide innovative water conservation tools and technology for agriculture and urban water use that can have immediate water supply benefits.

(c) Accelerated Project Decision and Elevation.—

(1) IN GENERAL.— On request by the Governor of the State, the heads of Federal agencies shall use the expedited procedures under this subsection to make final decisions relating to a Federal project or operation if the project's or operation's purpose is to provide relief for emergency drought conditions pursuant to subsections (a) and (b).

(2) REQUEST FOR RESOLUTION.—

(A) IN GENERAL.— On request by the Governor of the State, the head of a Federal agency referenced in paragraph (1), or the head of another Federal agency responsible for carrying out a review of a project, as applicable, the Secretary of the Interior shall convene a final project decision meeting with the heads of all relevant Federal agencies to decide whether to approve a project to provide relief for emergency drought

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conditions.

(B) MEETING.—The Secretary of the Interior shall convene a meeting requested under subparagraph (A) not later than 7 days after the date on which the meeting request is received.

(3) NOTIFICATION.—On receipt of a request for a meeting under paragraph (2), the Secretary of the Interior shall notify the heads of all relevant Federal agencies of the request, including information on the project to be reviewed and the date of the meeting.

(4) DECISION.—Not later than 10 days after the date on which a meeting is requested under paragraph (2), the head of the relevant Federal agency shall issue a final decision on the project, subject to subsection (e)(2).

(5) MEETING CONVENED BY SECRETARY.—The Secretary of the Interior may convene a final project decision meeting under this subsection at any time, at the discretion of the Secretary, regardless of whether a meeting is requested under paragraph (2).

(d) Application.—To the extent that a Federal agency, other than the agencies headed by the Secretaries, has a role in approving projects described in subsections (a) and (b), this section shall apply to those Federal agencies.

(e) Limitation.—Nothing in this section authorizes the heads of applicable Federal agencies to approve projects—

(1) that would otherwise require congressional authorization; or

(2) without following procedures required by applicable law.

(f) Drought Plan. The Secretaries of Commerce and the Interior, in consultation with appropriate State officials, shall develop a drought operations plan for [the duration of the existing drought emergency](#) that is consistent with the provisions of this section and other provisions of this Act intended to provide additional water supplies that could be of assistance during the current drought.

## SEC. 304. OPERATION OF CROSS-CHANNEL GATES.

(a) In General.—The Secretary of Commerce and the Secretary of the Interior shall jointly—

(1) authorize and implement activities to ensure that the Delta Cross Channel Gates remain open to the maximum extent practicable using findings from the United States Geological Survey on diurnal behavior of juvenal salmonids, timed to maximize the peak flood tide period and provide water supply and water quality benefits for the duration of the drought emergency declaration of the State, consistent with operational criteria and monitoring criteria developed pursuant to the Order Approving a Temporary Urgency Change in License and Permit Terms in Response to Drought Conditions of the California State Water Resources Control Board, effective January 31, 2014 (or a successor order) and other authorizations associated with it;

(2) with respect to the operation of the Delta Cross Channel Gates described in paragraph (1), collect data on the impact of that operation on—

(A) species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

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(B) water quality; and

(C) water supply;

(3) consistent with knowledge gained from activities carried out during 2014, collaborate with the California Department of Water Resources to install a deflection barrier at Georgiana Slough in coordination with Delta Cross Channel Gate diurnal operations to protect migrating salmonids;

Commented [A4]: Agencies are investigating the feasibility of diurnal operations.

(4) evaluate the combined salmonid survival in light of activities carried out pursuant to paragraphs (1) through (3) in deciding how to operate the Delta Cross Channel gates to enhance salmonid survival and water supply benefits; and

(5) not later than May 15, 2015, submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives a written report on the extent to which the gates are able to remain open.

(b) Recommendations.—After assessing the information collected under subsection (a), the Secretary of the Interior shall recommend revisions to the operation of the Delta Cross-Channel Gates, to the Central Valley Project, and to the State Water Project, including, if appropriate, any reasonable and prudent alternative contained in the biological opinion issued by the National Marine Fisheries Service on June 4, 2009, that are likely to produce fishery, water quality, and water supply benefits. The Secretary shall also coordinate with the State Water Resources Control Board to seek consistent direction for the operation of the Delta Cross-Channel Gates under federal and state law, including Water Right Decision 1641.

## SEC. 305. FLEXIBILITY FOR EXPORT/INFLOW RATIO.

In response to the declaration of a state of drought emergency by the Governor of California and for the period of time such a drought declaration remains in effect, the Commissioner of the Bureau of Reclamation shall continue to vary the averaging period of the Delta Export/Inflow ratio pursuant to the California State Water Resources Control Board decision D1641, approved in the March Temporary Urgency Change Order—

(1) to operate to a 35 percent Export/Inflow ratio with a 3 day averaging period on the rising limb of a Delta inflow hydrograph; and

(2) to operate to a 14 day averaging period on the falling limb of the Delta inflow hydrograph.

## SEC. 306. EMERGENCY ENVIRONMENTAL REVIEWS.

To minimize the time spent carrying out environmental reviews and to deliver water quickly that is needed to address emergency drought conditions in the State during the duration of an emergency drought declaration, the head of each applicable Federal agency shall, in carrying out this Act, consult with the Council on Environmental Quality in accordance with section 1506.11 of title 40, Code of Federal Regulations (including successor regulations), to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) during the emergency.

## SEC. 307. PRIORITIZING STATE REVOLVING FUNDS



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**DURING DROUGHTS.**

(a) In General.—This section shall apply for each of the fiscal years during which an emergency drought declaration of the State is in effect.

(b) The Administrator of the Environmental Protection Agency, in implementing the processes and programs under the State water pollution control revolving funds established under title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) and the State drinking water treatment revolving loan funds established under section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12), shall, for those projects that are eligible to receive assistance under section 603 of the Federal Water Pollution Control Act (33 U.S.C. 1383) or section 1452(a)(2) of the Safe Drinking Water Act (42 U.S.C. 300j–12(a)(2)),

(1) issue a determination of waivers within 30 days of the conclusion of the informal public comment period pursuant to section 436(c) of title IV of division G of Public Law 113–76; and

(2) authorize, at the request of the State, 40-year financing for assistance under section 603(d)(2) of the Federal Water Pollution Control Act (33 U.S.C. 1383(d)(2)) or section 1452(f)(2) of the Safe Drinking Water Act (42 U.S.C. 300j–12(f)(2)).

(c) Effect of Section.—Nothing in this section authorizes the Administrator of the Environmental Protection Agency to modify any funding allocation, funding criteria, or other requirement relating to State water pollution control revolving funds established under title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) and the State drinking water treatment revolving loan funds established under section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12) for any other State.

**SEC. 308. INCREASED FLEXIBILITY FOR REGULAR PROJECT OPERATIONS.**

The Secretaries shall, consistent with applicable laws (including regulations)—

(1) to the maximum extent practicable, based on the availability of water and without causing land subsidence or violating water quality standards—

(A) help meet the contract water supply needs of Central Valley Project refuges through the improvement or installation of water conservation measures, water conveyance facilities, and wells to use groundwater resources, on the condition that those activities may only be accomplished by using funding made available under the Water Assistance Program or the WaterSMART program of the Department of the Interior; and

(B) make available to Central Valley Project contractors a quantity of Central Valley Project surface water obtained from the activities carried out under subparagraph (A);

(2) ~~contingent upon funding~~, in coordination with the Secretary of Agriculture, enter into an agreement with the National Academy of Sciences to conduct a comprehensive study, to be completed not later than 1 year after the date of enactment of this Act, on the effectiveness and environmental impacts of saltcedar biological control efforts on increasing water supplies and improving riparian habitats of the Colorado River and its principal

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tributaries, in the State and elsewhere;

(3) in coordination with the California Department of Water Resources and the California Department of Fish and Wildlife, implement offsite upstream projects in the Delta and upstream Sacramento River and San Joaquin basins that offset the effects on species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) due to activities carried out pursuant this Act, as determined by the Secretaries;

(4) manage reverse flow in the Old and Middle Rivers as prescribed by the [smelt biological opinions issued by the United States Fish and Wildlife Service on December 15, 2008, for Delta smelt and by the National Marine Fisheries Service on June 4, 2009, for and the salmonids biological opinion](#), or any successor biological opinions, to minimize water supply reductions for the Central Valley Project and the State Project; ~~and issue guidance no later than December 31, 2015 directing their employees to take all steps necessary to manage flow in accordance with this paragraph;~~

(5) as soon as practicable after the date of enactment of this Act and pursuant to existing authority available to the Secretary of the Interior, participate in, issue grants, or otherwise provide funding for pilot projects to increase water in reservoirs in regional river basins experiencing extreme, exceptional, or sustained drought that have a direct impact on the water supply of the State, including the Colorado River Basin, on the condition that any participation, grant, or funding by the Secretary of the Interior with respect to the Upper Division shall be with or to the respective State; and

(6) use all available scientific tools to identify any changes to real-time operations of the Bureau of Reclamation, State, and local water projects that could result in the availability of additional water supplies.

## SEC. 309. TEMPORARY OPERATIONAL FLEXIBILITY FOR FIRST FEW STORMS OF 2015 WATER YEAR.

### (a) Findings:

(1) During the 2014 water year, operations of the Central Valley Project and the State Water Project, the incidental take of adult Delta smelt was zero; of juvenile Delta smelt, 78 (7.7% of the incidental take ~~level~~ ~~limit~~); of winter run chinook, 339 (1.4% of the incidental take ~~level~~ ~~limit~~); of spring run chinook, zero; and of steelhead, 261 (8.7% of the incidental take ~~level~~ ~~limit~~).

(2) The Central Valley Project and State Water Project exceeded an Old and Middle River flow of -5,000 cubic feet per second over a 14-day average for brief periods after three storm events in February and March 2014, as a result of increased pumping, but did not cause substantially increased take of smelt or salmon.

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(3) Hydrological conditions in dry years, such as the 2014 water year, have not triggered water pumping restrictions pursuant to the smelt biological opinion.

(4) The Secretaries should be allowed more flexibility to increase pumping levels without causing significant risk to the listed species or weakening other environmental protections.

(5) Given California's severe drought conditions, significant groundwater withdrawals for irrigation due to lack of surface water supplies, and the depletion of water supplies in reservoirs, it is imperative that the Secretaries exercise for the duration of the existing drought emergency the flexibility provided herein to capture the maximum amount of ~~storm~~ flows resulting from storm events when and if they occur in the 2015 water year, and provide for the diversion of water to increase water ~~those~~ supplies to the Central Valley Project and State Water Project so that farms, businesses, and homes in drought-stricken areas will have an opportunity to bolster their meager supplies when water is available.

(b) In general. For the duration of the existing drought emergency, ~~C~~consistent with avoiding additional adverse effects upon listed fish species beyond the range of those authorized under the Endangered Species Act and other environmental protections under subsection (e), the Secretaries shall authorize the Central Valley Project and the State Water Project, combined, to operate at levels that result in negative Old and Middle River flows ~~at up to~~ -7500 cubic feet per second (based on United States Geological Survey gauges on Old and Middle Rivers) daily average for up to 21 cumulative days after October 1, 2014, as described in subsection (c).

(c) Days of temporary operational flexibility. The temporary operational flexibility described in subsection (b) shall be authorized on days that the California Department of Water Resources determines the daily average river flow of the Sacramento River is at, or above, 17,000 cubic feet per second as measured at the Sacramento River at Freeport gauge maintained by the United States Geologic Survey.

(d) Compliance with ESA authorizations. In carrying out this section, the Secretaries may continue to impose any requirements under the biological opinions during any period of temporary operational flexibility as they determine are reasonably necessary to avoid additional adverse effects on listed fish species beyond the range of those authorized under the Endangered Species Act.

(e) Other environmental protections.

(1) The Secretaries' actions under this section shall be consistent with applicable regulatory requirements under state law, including State Water Resources Control Board Decision 1641, as it may be implemented in any given year;

(2) During the first flush of sediment out the Delta during the 2015 water year, OMR flow may be managed at rates less negative than -5000 cubic feet per second for a minimum duration to avoid movement of adult ~~d~~Delta smelt (*Hypomesus transpacificus*) to areas in the southern Delta that would be likely to increase entrainment at Central Valley Project and State Water Project pumping plants;

(3) This section shall not ~~have any effect on the application~~ ble requirements of the salmonid biological opinion from April 1 to May 31, ~~unless the Secretary of Commerce finds that some or all of such applicable requirements may be adjusted during this time~~

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(4) During operations under this section, the Commissioner of Reclamation, in coordination with the Fish and Wildlife Service, National Marine Fisheries Service, and California Department of Fish and Wildlife, shall undertake a monitoring program and other data gathering to insure incidental take ~~limits~~ levels are not exceeded, and to identify potential negative impacts and actions, if any, necessary to mitigate ~~any~~ impacts of the temporary operational flexibility to listed species listed ~~as threatened or endangered under the Endangered Species Act, 16 U.S.C. 1531-1544~~; and

(5) The Commissioner is authorized to take any action, including the transfer of appropriated funds between accounts that, in the Commissioner's judgment, are necessary to mitigate the impacts of such operations as long as any such mitigation is consistent with the requirements of this section.

(f) Technical adjustments to target period. If, before temporary operational flexibility has been implemented on 21 cumulative days, the Secretaries operate the Central Valley Project and the State Water Project combined at levels that result in Old and Middle River flows less negative than -7500 cubic feet per second during days of temporary operational flexibility as defined in subsection (c), the duration of such operation shall not be counted toward the 21 cumulative days specified in subsection (b).

(g) Emergency consultation; effect on running averages.

(1) If necessary to implement the provisions of this section, the Commissioner shall use the emergency consultation procedures under the Endangered Species Act and its implementing regulation at 50 CFR 402.05 to temporarily adjust the operating criteria under the biological opinions, solely for the 21 days of temporary operational flexibility—

(A) no more than necessary to achieve the purposes of this section consistent with the environmental protections in subsections (d) and (e); and

(B) including, as appropriate, adjustments to ensure that the actual flow rates during the periods of temporary operational flexibility do not count toward the 5-day and 14-day running averages of tidally filtered daily Old and Middle River flow requirements under the biological opinions.

(2) Following the conclusion of the 21 days of temporary operational flexibility, the Commissioner shall not reinitiate consultation on these adjusted operations if the effects on listed fish species of these operations under this section remain within the range of those authorized under the Endangered Species Act.

(h) Level of detail required for analysis. In articulating the determinations required under this section, the Secretaries shall fully satisfy the requirements herein but shall not be expected to provide a greater level of supporting detail for the analysis than feasible to provide within the short time frame permitted for timely decision-making in response to changing conditions in the Delta.

(i) Duration. This section shall expire on September 30, 2015.

## **SEC. 310. EXPEDITING WATER TRANSFERS.**

(a) In General.—Section 3405(a) of the Central Valley Project Improvement Act (Public Law

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102–575; 106 Stat. 4709(a)) is amended—

(1) by redesignating paragraphs (1) through (3) as paragraphs (4) through (6), respectively;

(2) in the matter preceding paragraph (4) (as so designated)—

(A) in the first sentence, by striking “In order to” and inserting the following:

“(1) IN GENERAL.—In order to”; and

(B) in the second sentence, by striking “Except as provided herein” and inserting the following:

“(3) TERMS.—Except as otherwise provided in this section”; and

(3) by inserting before paragraph (3) (as so designated) the following:

“(2) EXPEDITED TRANSFER OF WATER.—The Secretary shall take all necessary actions to facilitate and expedite transfers of Central Valley Project water in accordance with—

“(A) this Act;

“(B) any other applicable provision of the reclamation laws; and

“(C) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).”;

(4) in paragraph (4) (as so designated)—

(A) in subparagraph (A), by striking “to combination” and inserting “or combination”; and

(B) by striking “3405(a)(2) of this title” each place it appears and inserting “(5)”; and

(5) in paragraph (5) (as so designated), by adding at the end the following:

“(E) The contracting district from which the water is coming, the agency, or the Secretary shall determine if a written transfer proposal is complete within 45 days after the date of submission of the proposal. If the contracting district or agency or the Secretary determines that the proposal is incomplete, the district or agency or the Secretary shall state with specificity what must be added to or revised for the proposal to be complete.”; and

(6) in paragraph (6) (as so designated), by striking “3405(a)(1)(A)-(C), (E), (G), (H), (I), (L), and (M) of this title” and inserting “(A) through (C), (E), (G), (H), (I), (L), and (M) of paragraph (4)”.

(b) Conforming Amendments.—The Central Valley Project Improvement Act (Public Law 102–575) is amended—

(1) in section 3407(c)(1) (106 Stat. 4726), by striking “3405(a)(1)(C)” and inserting “3405(a)(4)(C)”; and

(2) in section 3408(i)(1) (106 Stat. 4729), by striking “3405(a)(1) (A) and (J) of this title” and inserting “subparagraphs (A) and (J) of section 3405(a)(4)”

**SEC. 311. WARREN ACT CONTRACTS.**

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[To be supplied.]

**SEC. 312. ADDITIONAL WARREN ACT CONTRACTS.**

[To be supplied.]

**TITLE IV—INCREASING WATER STORAGE**

**SEC. 401. FINDINGS.**

Congress finds that—

(1) the record drought conditions being experienced in the State as of the date of enactment of this Act are—

(A) expected to recur in the future; and

(B) likely to do so with increasing frequency;

(2) water storage is an indispensable and integral part of any solution to address the long-term water challenges of the State;

(3) Congress authorized relevant feasibility studies for 4 water storage projects in the State, including projects for—

(A) enlargement of Shasta Dam in Shasta County under section 2(a) of Public Law 96–375 (94 Stat. 1506), as reaffirmed under section 103(d)(1)(A)(i)(I) of Public Law 108–361 (118 Stat. 1684);

(B) enlargement of Los Vaqueros Reservoir in Contra Costa County under section 215 of Public Law 108–7 (117 Stat. 147), as reaffirmed under section 103(d)(1)(A)(i)(II) of Public Law 108–361 (118 Stat. 1684);

(C) construction of North-of-Delta Offstream Storage (Sites Reservoir) in Colusa County under section 215 of Public Law 108–7 (117 Stat. 147), as reaffirmed under section 103(d)(1)(A)(ii)(I) of Public Law 108–361 (118 Stat. 1684); and

(D) construction of the Upper San Joaquin River storage (Temperance Flat) in Fresno and Madera Counties under section 215 of Public Law 108–7 (117 Stat. 147), as reaffirmed under section 103(d)(1)(A)(ii)(II) of Public Law 108–361 (118 Stat. 1684);

(4) (A) as of the date of enactment of this Act, it has been more than 10 years since the authorization of the feasibility studies referred to in paragraph (3); but

(B) complete and final feasibility studies have not been prepared for any of those water storage projects;

(5) as of August 2014, only 2 of the 4 projects referred to in paragraph (3) have completed draft feasibility studies;

(6) the slow pace of work on completion of the feasibility studies for those 4 water storage projects is—

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(A) unjustified; and

(B) of deep concern; and

(7) there is significant public interest in, and urgency with respect to, completing all feasibility studies and environmental reviews for the water storage projects referred to in paragraph (3), given the critical need for that infrastructure to address the water challenges of the State.

**SEC. 402. CALFED STORAGE FEASIBILITY STUDIES.**

(a) In General.—Notwithstanding subparagraph (B)(i) of section 103(d)(1) of Public Law 108–361 (118 Stat. 1684), the Secretary of the Interior, acting through the Commissioner of Reclamation (referred to in this title as the “Secretary”), shall complete a final feasibility study and any other applicable environmental review documents for the project described in—

(1) subparagraph (A)(i)(I) of that section by not later than December 31, 2014;

(2) subparagraph (A)(ii)(II) of that section by not later than July 31, 2015.

(b) Environmental Reviews.—In carrying out subsection (a), the Secretary—

(1) shall ensure that—

(A) all applicable reviews, including reviews required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), are completed as expeditiously as practicable; and

(B) the shortest applicable process under that Act is used, including in the completion of—

(i) feasibility studies;

(ii) draft environmental impact statements; and

(iii) final environmental impact statements; and

(2) shall not be required to complete a draft or final environmental impact statement if the Commissioner of Reclamation determines, and the Secretary concurs, that the project fails to meet applicable Federal cost-benefit requirements or standards.

(c) Accountability.—

(1) If the Bureau of Reclamation determines that an environmental review document for the water storage projects referenced in of Section 103(d)(1) of P.L. 108-361 will not be completed according to the schedule specified in subsection (a), the Bureau shall notify the Senate Committee on Energy and Natural Resources, the Senate Appropriations Subcommittee on Energy and Water Development, and the House of Representatives Transportation and Infrastructure Committee within 14 days of the determination. The notification shall include:

(A) An explanation of the delay;

(B) The anticipated length of the delay and the revised completion date;

(C) The steps that the Bureau will take to mitigate the delay, including, but not limited to, a request to reprogram existing funds appropriated to the Bureau to meet the revised completion deadline.

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(2) The Bureau of Reclamation shall carry out the procedures in subsection (a) for each subsequent delay beyond the revised completion deadline.

**SEC. 403. WATER STORAGE PROJECT CONSTRUCTION.**

(a) The Secretary, acting through the Commissioner of the Bureau of Reclamation, may partner or enter into an agreement on the water storage projects identified in section 103(d)(1) of the Water Supply Reliability and Environmental Improvement Act (Public Law 108-361) (and Acts supplemental and amendatory to the Act) with local joint powers authorities formed pursuant to State law by irrigation districts and other local water districts and local governments within the applicable hydrologic region, to advance those projects.

(b) [PLACEHOLDER FOR AUTHORIZATION ISSUE]

**SEC. 404. OTHER STORAGE FEASIBILITY STUDIES.**

(a) Definition of Qualifying Project.—In this section, the term “qualifying project” means new surface water storage projects constructed on lands administered by the Department of the Interior in a State in which the Bureau of Reclamation has jurisdiction, exclusive of any easement, right-of-way, lease, or any private holding.

(b) Lead Agency.—

(1) QUALIFYING PROJECTS WITHIN JURISDICTION OF BUREAU OF RECLAMATION.—The Bureau of Reclamation shall serve as the lead agency for purposes of coordinating all reviews, analyses, opinions, statements, permits, licenses, and other approvals or decisions required under Federal law (including regulations) to construct qualifying projects within the jurisdiction of the Bureau.

(2) QUALIFYING PROJECTS OUTSIDE JURISDICTION OF BUREAU OF RECLAMATION.—If the site of a qualifying project is not located in a State in which the Bureau of Reclamation has jurisdiction, the Secretary shall, by not later than 45 days after the date of receipt of an application for the qualifying project—

(A) designate an alternate agency within the Department of the Interior to serve as the lead agency for purposes of coordinating all reviews, analyses, opinions, statements, permits, licenses, and other approvals or decisions required under Federal law (including regulations) to construct the qualifying project; or

(B) in consultation with the heads of other Federal departments and agencies, identify the appropriate lead agency for the qualifying project.

(c) Cooperating Agencies.—

(1) FEDERAL DEPARTMENTS AND AGENCIES.—The lead agency designated under paragraph (1) or (2) of subsection (b) shall—

(A) as soon as practicable after receipt of an application for a qualifying project, identify any Federal department or agency that may have jurisdiction over a review, permit, license, approval, or decision required for the qualifying project under applicable Federal laws (including regulations); and

(B) as soon as practicable after the date of identification under subparagraph (A)—



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- (i) notify each applicable department or agency of the identification; and
- (ii) designate the department or agency as a cooperating agency, unless the department or agency—
  - (I) has no jurisdiction or authority with respect to the qualifying project;
  - (II) has no expertise or information relevant to the qualifying project or any review, permit, license, approval, or decision associated with the qualifying project; or
  - (III) does not intend—
    - (aa) to submit comments regarding the qualifying project; or
    - (bb) to conduct any review of the qualifying project or make any decision with respect to the qualifying project in a manner other than in cooperation with the Bureau of Reclamation.

(2) STATES.—A State in which a qualifying project is proposed to be carried out may elect, consistent with Federal and State law, to participate as a cooperating agency, if the lead agency designated for the proposed qualifying project under paragraph (1) or (2) of subsection (b) determines that the applicable agency of the State—

- (A) has jurisdiction over the qualifying project under applicable Federal or State law;
- (B) is required to conduct or issue a review of the qualifying project; and
- (C) is required to make a determination regarding issuing a permit, license, or approval of the qualifying project.

(d) Duties of Lead Agency.—

(1) IN GENERAL.—Not later than 30 days after the date of receipt of an application for approval of a qualifying project, the lead agency shall hold a meeting among the applicant, the lead agency, and all cooperating agencies to establish, with respect to the qualifying project, all applicable—

- (A) requirements;
- (B) review processes; and
- (C) stakeholder responsibilities.

(2) SCHEDULE.—

(A) ESTABLISHMENT.—Not later than 30 days after the date of the meeting under paragraph (1), the lead agency, in consultation with the attendees of the meeting, shall establish a schedule for completion of the qualifying project, taking into consideration, among other relevant factors—

- (i) the responsibilities of cooperating agencies under applicable laws and regulations;
- (ii) the resources available to the cooperating agencies and non-Federal project stakeholders;

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- (iii) the overall size and complexity of the qualifying project;
- (iv) the overall schedule for, and cost of, the qualifying project; and
- (v) the sensitivity of the natural and historic resources that may be affected by the qualifying project.

(B) REQUIREMENTS.—On establishment of a schedule for a qualifying project under subparagraph (A), the lead and cooperating agencies shall—

- (i) to the maximum extent practicable, adhere to the schedule; and
- (ii) submit to the Committee on Environment and Public Works of the Senate and the Committee on Natural Resources of the House of Representatives on a semiannual basis a report describing any delays in the schedule, including a description of—

(I) the reasons for the delay;

(II) the actions that the lead and cooperating agencies will take to minimize the delay; and

(III) a revised schedule for the qualifying project, if applicable.

(e) Environmental Reviews.—

(1) SINGLE, UNIFIED ENVIRONMENTAL REVIEW DOCUMENT.—

(A) IN GENERAL.—The lead agency with respect to a qualifying project, in consultation with appropriate stakeholders and cooperating agencies, shall determine whether a single, unified environmental review document relating to the qualifying project is sufficient to comply with applicable Federal laws (including regulations), including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(B) ACTION ON DECLINATION.—If, after consultation under subparagraph (A), a lead agency determines not to adopt a single, unified environmental review document relating to a qualifying project—

(i) the lead agency shall—

(I) document the reasons for the determination; and

(II) submit to the Secretary a report describing those reasons; and

(ii) the Secretary may require the adoption of a single, unified document at the discretion of the Secretary, based on good cause.

(2) ENVIRONMENTAL ASSESSMENT.—Except as provided under paragraph (4), if the lead agency with respect to a qualifying project, in consultation with cooperating agencies, determines that an environmental assessment is sufficient to comply with the requirements of this subsection and other applicable Federal laws (including regulations)—

(A) the public comment period for a draft environmental assessment shall be no more than 60 days after publication in the Federal Register of notice of the public issuance of that draft; and

(B) the lead agency shall issue the final environmental assessment by not later than

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180 days after the end of the period for public comments on the draft environmental assessment.

(3) ENVIRONMENTAL IMPACT STATEMENT.— Except as provided under paragraph (4), if the lead agency with respect to a qualifying project, in consultation with cooperating agencies, determines that an environmental impact statement is required to comply with the requirements of this subsection and other applicable Federal laws (including regulations)—

(A) the public comment period for a draft environmental impact statement shall be no more than 60 days after publication in the Federal Register of notice of the public issuance of that draft; and

(B) the lead agency shall issue the final environmental impact statement by not later than 1 year after the end of the period for public comments on the draft environmental impact statement.

(4) MODIFICATION OF SCHEDULE.—In carrying out paragraphs (2) and (3),

(A) the lead agency with respect to a qualifying project may modify the schedule of the qualifying project if:

(i) the Federal lead agency can demonstrate good cause, such as the need for additional time to comply with other statutory or regulatory requirements other than the National Environmental Policy Act of 1969, and the head of that agency submits to Congress a written determination describing the cause and reasons for the modification no less than 30 days before the original scheduled deadline; or

(ii) the Federal lead agency, the project sponsor, the joint lead agency (as applicable), and all participating and cooperating agencies agree to such modification.

(B) no modification pursuant to subparagraph (4)(A) shall postpone the issuance of a final environmental assessment by more than 1 year, or a final environmental impact statement by more than 2 years, unless the conditions under (4)(A)(i) or (4)(A)(ii) are met.

(C) If a modification occurs pursuant to this paragraph, the Federal lead agency shall issue and adhere to the revised schedule unless the conditions under (4)(A)(i) or (4)(A)(ii) are met.

(5) REQUIREMENTS.—On commencement of the environmental review process under this subsection, the lead and cooperating agencies shall, as soon as practicable—

(A) make available to all stakeholders of the qualifying project information regarding—

(i) the environmental and socioeconomic resources located within the area of the qualifying project; and

(ii) the general locations of the alternatives under consideration; and

(B) identify any issues of concern regarding the potential environmental or socioeconomic effects of the qualifying project, including any issues that could substantially delay or prevent an agency from granting a permit or other approval that

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is needed for a study relating to the qualifying project.

(f) Concurrent Review Actions.—

(1) IN GENERAL.—Any review, analysis, permit, license, approval, or decision regarding a qualifying project made by a Federal, State, or local government agency shall be—

(A) conducted, to the maximum extent practicable, concurrently with any other applicable government agency; and

(B) incorporated in the schedule for the qualifying project under subsection (d)(2).

(2) REQUIREMENT.—The lead and cooperating agencies for a qualifying project shall formulate and implement administrative, policy, and procedural mechanisms to enable adherence to the schedule for the qualifying project in a timely, coordinated, and environmentally responsible manner.

(3) GUIDANCE.—The Secretary shall issue guidance regarding the use of programmatic approaches to carry out the environmental review process that, to the maximum extent practicable—

(A) eliminates repetitive discussions of the same issues;

(B) focuses on the actual issues ripe for analysis at each level of review;

(C) establishes a formal process for coordinating with participating and cooperating agencies, including the establishment of a list of all data required to carry out an environmental review process; and

(D) complies with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and all other applicable laws and regulations.

(g) Administrative Record and Data Management.—

(1) IN GENERAL.—The lead agency shall—

(A) be responsible for compiling the administrative record of the information used as the basis for decisions relating to a qualifying project; and

(B) to the maximum extent practicable and consistent with Federal law, make available all data regarding the qualifying project in a format that is accessible via electronic means for project stakeholders, cooperating agencies, and the public.

(2) REPORTS.—Not less frequently than once each year, the lead agency shall submit a progress report regarding a qualifying project to project stakeholders, cooperating agencies, the Committee on Environment and Public Works of the Senate, and the Committee on Natural Resources of the House of Representatives.

(h) Participation by Non-Federal Project Sponsors.—

(1) APPLICATION TO SERVE AS COOPERATING AGENCY.—A non-Federal sponsor of a qualifying project may submit to the lead Secretary an application to serve as a cooperating agency of the qualifying project for purposes of preparing any necessary documents relating to the qualifying project, including an environmental review, if—

(A) the non-Federal sponsor is a public agency as defined under the laws of the state in which the agency is located;

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(B) the non-Federal sponsor agrees to adhere to—

(i) all required Federal laws (including regulations) in carrying out the qualifying project; and

(ii) all decisions regarding the qualifying project that have been agreed on by other stakeholders of the qualifying project; and

(C) the applicable lead agency certifies that participation by the non-Federal sponsor will not inappropriately bias the qualifying project in favor of the non-Federal sponsor.

(2) FUNDS.—Any funds contributed by a non-Federal sponsor to a qualifying project—

(A) may be accepted to maintain or accelerate progress on the qualifying project, subject to the condition that the Secretary shall—

(i) review the use of the funds; and

(ii) certify in writing that the funds—

(I) are used solely to complete applicable environmental reviews; and

(II) do not unduly influence any permit or approval decision regarding the qualifying project; and

(B) shall be applied toward the non-Federal cost-share of the qualifying project.

(i) Applicability to Calfed Storage Studies.—For any feasibility study referred to in section 401(3), this section shall apply to all activities to be carried out under the study on or after the date of enactment of this Act that would lead to congressional authorization of an applicable project for construction.

**SEC. 405. DAM SAFETY PROJECTS WITH INCREASED STORAGE COMPONENT.**

(a) Additional Project Benefits.—The Reclamation Safety of Dams Act of 1978 is amended—

(1) in section 3 (43 U.S.C. 507), by striking “Construction” and inserting “Except as provided in section 5B, construction”; and

(2) by inserting after section 5A (43 U.S.C. 509a) the following:

**“SEC. 5B. ADDITIONAL PROJECT BENEFITS.**

“(a) In General.—Notwithstanding section 3, if the Secretary, in the judgment of the Secretary, makes a determination described in subsection (b), the Secretary is authorized to develop any additional project benefit—

“(1) through the construction of new or supplementary works on a project in conjunction with the activities carried out by the Secretary pursuant to section 2; and

“(2) subject to the conditions described in the feasibility study relating to the project.

“(b) Description of Determination.—A determination referred to in subsection (a) is a determination by the Secretary that—

“(1) an additional project benefit, including but not limited to additional conservation

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storage capacity, is—

“(A) necessary; and

“(B) in the interests of the United States; and

“(2) the project benefit proposed to be carried out is—

“(A) feasible; and

“(B) not inconsistent with the purposes of this Act.

“(c) Requirements.—The costs associated with developing an additional project benefit under this section shall be—

“(1) allocated to entity or entities benefitting from the additional conservation storage capacity, subject to agreement between the state and federal funding agencies on such allocations; and

“(2) repaid in accordance with all applicable provisions of Federal reclamation law (the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act (43 U.S.C. 371 et seq.).”.

(b) San Luis Reservoir Expansion.—Section 103(f)(1)(A) of Public Law 108–361 (118 Stat. 1694) is amended—

(1) by striking “Funds” and inserting the following:

“(i) IN GENERAL.—Funds”; and

(2) by adding at the end the following:

“(ii) ENVIRONMENTAL REVIEWS AND FEASIBILITY STUDY.—The Commissioner of Reclamation shall submit to Congress—

“(I) an expansion draft environmental impact statement and feasibility study relating to the San Luis Reservoir by not later than April 1, 2016; and

“(II) a final environmental impact statement relating to the San Luis Reservoir by not later than December 31, 2016.”.

**SEC. 406. UPDATING WATER OPERATIONS MANUALS  
FOR NON-FEDERAL PROJECTS.**

(a) Definitions.—In this section:

(1) NON-FEDERAL PROJECT.—

(A) IN GENERAL.—The term “non-Federal project” means a non-Federal reservoir project operated for flood control in accordance with rules prescribed by the Secretary pursuant to section 7 of the Act of December 22, 1944 (commonly known as the “Flood Control Act of 1944”) (58 Stat. 890, chapter 665).

(B) EXCLUSION.—The term “non-Federal project” does not include any dam or reservoir owned by—

(i) the Bureau of Reclamation; or

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(ii) the Corps of Engineers.

(2) OWNER.—The term “owner” with respect to a non-Federal project, does not include—

(A) the Secretary;

(B) the Secretary of the Interior; or

(C) the head of any other Federal department or agency, notwithstanding any Federal monetary contribution made toward the construction cost of the relevant non-Federal project, if the contribution is predicated on flood control or other specific benefit.

(3) SECRETARY.—The term “Secretary” means the Secretary of the Army.

(b) Review by Secretary.—

(1) IN GENERAL.—Not later than 1 year after the date of receipt of a request from the owner of a non-Federal project, the Secretary, in consultation with the owner, shall review the water control manual and flood control rule curves and any operational or structural modifications proposed by the owner, including the use of improved weather forecasting and run-off forecasting methods, to enhance the existing purposes of the non-Federal project.

(2) REPORT.—Not later than 90 days after the date of completion of a review under paragraph (1), the Secretary shall submit to the owner of the applicable non-Federal project a report describing the results of the review.

(3) PRIORITY.—In carrying out of this subsection, the Secretary shall give priority to review and revision of water control manuals and flood control rule curves for any non-Federal project—

(A) that is located in a State in which a drought emergency has been declared during the 1-year period ending on the date of review by the Secretary;

(B) the owner of which has submitted to the Secretary a formal request to review or revise the operations manual or rule curves to accommodate new watershed data or proposed project modifications or operational changes;

(C) the water control manual and hydrometeorological information establishing the flood control rule curves of which have not been revised during the 20-year period ending on the date of review by the Secretary;

(D) with respect to which a completed probable maximum flood analysis or other data indicates that revisions of the project control manual or rule curves are likely to enhance water supply benefits and flood control operations; and

(E) modifications or operational changes proposed by the owner of which are likely to enhance water supply benefits and flood control operations.

(4) NON-FEDERAL CONTRIBUTIONS.—The Secretary may accept non-Federal funds for all or a portion of the cost of carrying out a review or revision of water control manuals and rule curves for non-Federal projects under this subsection.

**SEC. 407. CENTRAL VALLEY PROJECT.**

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(a) Cooperative Agreements.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, to determine the feasibility of an agreement for long-term use of an existing or expanded non-Federal storage or conveyance facility to augment Federal water supply, ecosystem, and operational flexibility benefits, the Secretary shall offer to enter into cooperative agreements with non-Federal entities to provide replacement water supplies for drought relief for—

(A) contractors of the Central Valley Project (as defined in section 3403 of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706));

(B) units of the National Wildlife Refuge System;

(C) State wildlife areas; and

(D) private wetland areas.

(2) REQUIREMENTS.—A cooperative agreement under this subsection shall—

(A) include the purchase of storage capacity in non-Federal facilities from willing sellers; and

(B) provide reimbursement for the temporary use of available capacity in existing above-ground, off-stream storage and associated conveyance facilities owned by local water agencies.

(b) Report.—Not later than 2 years after the date of enactment of this Act, the Secretary shall submit to the Chief of the National Wildlife Refuge System and contractors of the Central Valley Project a report describing the feasibility of the agreement for long-term use described in subsection (a)(1).

## TITLE V—WATER RIGHTS PROTECTIONS

### SEC. 501. PROTECTIONS FOR STATE WATER PROJECT CONTRACTORS.

If, as a result of the application of this Act, the California Department of Fish and Wildlife:

(a) revokes the consistency determination pursuant to California Fish and Game Code section 2080.1;

(b) amends or issues a new consistency determination pursuant to California Fish and Game Code section 2080.1 in a manner that results in reduced water supply to the State Water Project as compared with the water supply available under the ~~S~~smelt ~~B~~biological ~~O~~opinion and the ~~S~~salmonid ~~B~~biological ~~O~~opinion; or

(c) requires take authorization under section 2081 for operation of the State Water Project in a manner that results in reduced water supply to the State Water Project as compared with the water supply available under the ~~S~~smelt ~~B~~biological ~~O~~opinion and the ~~S~~salmonid ~~B~~biological ~~O~~opinion,

then, the water supply benefits of such action by the California Department of Fish and

**Commented [A6]:** The agencies have not had a chance to fully analyze this Title. We expect the House to provide further suggestions, and we will seek the agencies' technical feedback on the entire title with the House's suggestions included.



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Wildlife accruing to the Central Valley Project, if any, shall be shared equally with the State Water Project.

**SEC. 502. AREA OF ORIGIN PROTECTIONS.**

(a) The Secretary of the Interior (Secretary) is directed in the operation of the Central Valley Project (CVP) to adhere to California's water rights laws governing water rights priorities by honoring water rights senior to those held by the United States for operation of the CVP, regardless of the source of priority, including any appropriative water rights initiated prior to December 19, 1914, as well as water rights and other priorities perfected or to be perfected pursuant to California Water Code Part 2 of Division 2. Article 1.7 (commencing with section 1215 of Chapter 1 of Part 2 of Division 2, Sections 10505, 10505.5, 11128, 11460, 11461, 11462 and 11463, and Sections 12200 to 12220, inclusive).

(b) Any action that requires that diversions be bypassed or that involves the release of water from any CVP water storage facility taken by the Secretary or the Secretary of the Department of Commerce pursuant to Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531, et seq.) shall be applied in a manner that is consistent with water rights priorities established by California law.

**SEC. 503. NO REDIRECTED ADVERSE IMPACTS.**

The Secretary shall ensure that, except as otherwise provided for in a water service or repayment contract, actions taken in compliance with legal obligations imposed pursuant to or as a result of this Act, including, but not limited to, such actions under the Endangered Species Act of 1973 (16 U.S.C. § 1531 et seq.) and other federal laws, shall not cause redirected adverse water supply or fiscal impacts to those within the Sacramento River Watershed or the State Water Project.

**SEC. 504. EFFECT ON STATE LAWS.**

Nothing in this Act preempts any State law in effect on the date of enactment of this Act, including area of origin and other water rights protections.

**TITLE VI—MISCELLANEOUS**

**SEC. 601. AUTHORIZED SERVICE AREA.**

(a) In General.—The authorized service area of the Central Valley Project authorized under the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706) shall include the area within the boundaries of the Kettleman City Community Services District, California, as in existence on the date of enactment of this Act.

(b) Long-term Contract.—

(1) IN GENERAL.—Notwithstanding the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706) and subject to paragraph (2), the Secretary of the Interior, in accordance with the reclamation laws, shall enter into a long-term contract with the Kettleman City Community Services District, California, under terms and conditions

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mutually agreeable to the parties, for the delivery of up to 900 acre-feet of Central Valley Project water for municipal and industrial use.

(2) LIMITATION.—Central Valley Project water deliveries authorized under the contract entered into under paragraph (1) shall be limited to the minimal quantity necessary to meet the immediate needs of the Kettleman City Community Services District, California, in the event that local supplies or State Water Project allocations are insufficient to meet those needs.

(c) Permit.—The Secretary shall apply for a permit with the State for a joint place of use for water deliveries authorized under the contract entered into under subsection (b) with respect to the expanded service area under subsection (a), consistent with State law.

(d) Additional Costs.—If any additional infrastructure, water treatment, or related costs are needed to implement this section, those costs shall be the responsibility of the non-Federal entity.

## SEC. 602. RESCHEDULED WATER.

(a) In General.—In connection with operations of the Central Valley Project, California, if the San Luis Reservoir does not fill by the last day of February of any year, the Secretary of the Interior shall permit any entity with an agricultural water service or repayment contract for the delivery of water from the Delta Division or the San Luis Unit to reschedule into the immediately following contract year (March 1 through the last day of February) any unused Central Valley Project water previously allocated for irrigation purposes.

(b) Apportionment.—If Project water remaining in Federal storage in San Luis Reservoir on the last day of February of any year is insufficient to meet the aggregate of all requests to rescheduling water requests under subsection (a), the Secretary of the Interior shall, based on contract quantity, apportion among all contractors that request to reschedule water all Project water remaining in San Luis Reservoir on the last day of February of the applicable year.

(c) Availability of Additional Water.—If water remaining in San Luis Reservoir on the last day of February is apportioned pursuant to paragraph (b), the Secretary shall make all reasonable efforts to make available additional water up to the aggregate of rescheduling requests; provided that such efforts shall not interfere with Central Valley Project operations or the Secretary's ability to meet the United States' obligations to San Joaquin River Exchange Contractors or other settlement contractors in the contract year for which Central Valley Project water has been rescheduled.

## SEC. 603. FISHERIES DISASTER DECLARATION.

[TO BE SUPPLIED.]

## SEC. 604. OVERSIGHT BOARD FOR RESTORATION FUND.

(a) Report; Advisory Board.—Section 3407 of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4726) is amended by adding at the end the following:

“(g) Report on Expenditure of Funds.—

“(1) IN GENERAL.—For each fiscal year, the Secretary, in consultation with the Advisory

**Commented [A7]:** The agencies are still reviewing the contents of this section. We anticipate the House will provide further suggestions, and we intend to seek the agencies' technical feedback on this language as modified by the House's suggestions.

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Board, shall submit to Congress a plan for the expenditure of all of the funds deposited into the Restoration Fund during the preceding fiscal year.

“(2) CONTENTS.—The plan shall include an analysis of the cost-effectiveness of each expenditure.

“(h) Advisory Board.—

“(1) ESTABLISHMENT.—There is established the Restoration Fund Advisory Board (referred to in this section as the ‘Advisory Board’), which shall be composed of 14 members appointed by the Secretary.

“(2) MEMBERSHIP.—

“(A) IN GENERAL.—The Secretary shall appoint members to the Advisory Board that represent the various Central Valley Project stakeholders, of whom—

“(i) 3 members shall be agricultural users of the Central Valley Project;

“(ii) 2 members shall be municipal and industrial users of the Central Valley Project;

“(iii) 3 members shall be power contractors of the Central Valley Project;

“(iv) 1 member shall be a representative of a federal wildlife refuge that contracts for Central Valley Project water supplies with the Bureau of Reclamation;

“(v) 1 member shall represent nongovernmental organizations involved in the protection and restoration of California fisheries;

“(vi) 1 member shall represent the commercial fishing industry;

“(vii) 1 member shall represent the recreational fishing industry; and

“(viii) 2 members shall be appointed at the discretion of the Secretary.

“(B) OBSERVER.—The Secretary and the Secretary of Commerce may each designate a representative to act as an observer of the Advisory Board.

“(C) CHAIRMAN.—The Secretary shall appoint 1 of the members described in subparagraph (A) to serve as Chairman of the Advisory Board.

“(3) TERMS.—The term of each member of the Advisory Board shall be 4 years.

“(4) DATE OF APPOINTMENTS.—The appointment of a member of the Panel shall be made not later than—

(A) the date that is 120 days after the date of enactment of this Act; or

(B) in the case of a vacancy on the Panel described in subsection (c)(2), the date that is 120 days after the date on which the vacancy occurs.

“(5) Vacancies.—

(A) IN GENERAL.—A vacancy on the Panel shall be filled in the manner in which the original appointment was made and shall be subject to any conditions that applied with respect to the original appointment.

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(B) FILLING UNEXPIRED TERM.—An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

(C) EXPIRATION OF TERMS.—The term of any member shall not expire before the date on which the successor of the member takes office.

“(6) Removal —A Member of the Panel may be removed from office by the Secretary of the Interior.

“(7) Federal Advisory Committee Act. —The Panel shall not be subject to the requirements of the Federal Advisory Committee Act.

“(8) DUTIES.—The duties of the Advisory Board are—

“(A) to meet not less frequently than semiannually to develop and make recommendations to the Secretary regarding priorities and spending levels on projects and programs carried out under this title;

“(B) to ensure that any advice given or recommendation made by the Advisory Board reflects the independent judgment of the Advisory Board;

“(C) not later than December 31, 2015, and annually thereafter, to submit to the Secretary and Congress the recommendations under subparagraph (A); and

“(D) not later than December 31, 2015, and biennially thereafter, to submit to Congress a report that details the progress made in achieving the actions required under section 3406.

“(9) ADMINISTRATION.—With the consent of the appropriate agency head, the Advisory Board may use the facilities and services of any Federal agency.”

“(10) Cooperation and Assistance.—

(A) Upon request of the Panel Chairperson for information or assistance to facilitate the carrying out of this section, the Secretary of the Interior shall promptly provide such information, unless otherwise prohibited by law.

(B) Space and Assistance.—The Secretary of the Interior shall provide the Panel with appropriate and adequate office space, together with such equipment, office supplies, and communications facilities and services as may be necessary for the operation of the Panel, and shall provide necessary maintenance services for such offices and the equipment and facilities located therein.

## SEC. 605. WATER OPERATIONS REVIEW PANEL.

(a) Establishment.—There is established a panel to be known as the “Water Operations Review Panel”.

(b) Membership.—

(1) COMPOSITION.—The Panel shall be composed of 5 members appointed by the Secretary of the Interior, in consultation with the Secretary of Commerce, of whom—

(A) 1 member shall be a person who possesses expert knowledge of methods generally accepted by the scientific community, former State elected official, who shall be the Chairperson of the Panel;

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(B) 2 members shall be fisheries biologists, of whom—

(i) 1 member shall have expertise in Delta smelt; and

(ii) 1 member shall have expertise in salmonids; and

(C) 2 members shall be engineers with substantial expertise in water operations.

~~(2) RECOMMENDATIONS.—The Secretary of the Interior shall consider the recommendations~~

~~(43)~~ (4) DATE OF APPOINTMENTS.—The appointment of a member of the Panel shall be made not later than—

(A) the date that is 120 days after the date of enactment of this Act; or

(B) in the case of a vacancy on the Panel described in subsection (c)(2), the date that is 120 days after the date on which the vacancy occurs.

(c) Term; Vacancies.—

(1) TERMS.—A member of the Panel shall be appointed for a term of 3 years, except that, with respect to the members first appointed under this section—

(A) the Chairperson shall be appointed for a term of 3 years;

(B) of the members appointed under subsection (b)(1)(B)—

(i) 1 member shall be appointed for a term of 1 year; and

(iii) 1 member shall be appointed for a term of 2 years;

(C) of the members appointed under subsection (b)(1)(C)—

(i) 1 member shall be appointed for a term of 1 year; and

(ii) 1 member shall be appointed for a term of 2 years.

(2) VACANCIES.—

(A) IN GENERAL.—A vacancy on the Panel shall be filled in the manner in which the original appointment was made and shall be subject to any conditions that applied with respect to the original appointment.

(B) FILLING UNEXPIRED TERM.—An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

~~(3) EXPIRATION OF TERMS.—The term of any member shall not expire before the date on which the successor of the member takes office.~~

(d) Removal. —A Member of the Panel may be removed from office by the Secretary of the Interior.

(e) Federal Advisory Committee Act. —The Panel shall not be subject to the requirements of the Federal Advisory Committee Act.

(f) Duties.

(1) Annual Assessment and Report on Agencies' Operational Decisions under this Act.—

(A) IN GENERAL.—No later than November 30, 2015, and annually no later than

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November 30 thereafter, the Panel shall report an assessment of the agencies' operational decisions under this Act and recommendations for the prospective implementation of this Act to the following Congressional committees:

- (i) Senate Committee on Environment and Public Works;
- (ii) Senate Appropriations Subcommittee on Energy and Water Development;
- (iii) House Natural Resources Committee; and
- (iv) House Appropriations Subcommittee on Energy and Water Development.

(B) RETROSPECTIVE ASSESSMENT.—In making the retrospective assessment under paragraph (1), the Panel shall review and evaluate restrictions imposed under the smelt biological opinion and the salmonid biological opinion, and successor opinions, on operations of the Central Valley Project and State Water Project ~~the Director of the Fish and Wildlife Service, Administrator of NOAA Fisheries, and Commissioner of Reclamation's~~ —

(i) to determine the efficacy of those restrictions for the purpose of protecting listed species; and decisions in implementing this Act and other Federal laws applicable to the operations of the Central Valley Project and the State Water Project;

(iii) efforts to minimize water supply reductions for the Central Valley Project and State Water Project resulting from implementation of the smelt biological opinion and the salmonid biological opinion, and successor opinions. ~~disruptions while complying with the Endangered Species Act and this Act.~~

(C) PROSPECTIVE RECOMMENDATIONS.—The Panel shall make recommendations for prospective actions and potential actions warranting further study to better achieve the purposes of this Act and the Endangered Species Act as applied to the operations of the Central Valley Project and the State Water Project, including proposals—

(i) that in combination, both increase the survival of listed species and increase water supplies for the Central Valley Project and the State Water Project;

(ii) to increase the survival of listed fish species with little to no adverse effects on water supplies for the Central Valley Project and the State Water Project that would result from taking the specific proposed action recommended;

(iii) ~~iv~~ that respond to the annual Delta Science Program Independent Review Panel reports on the Long-term Operations Opinions.

(2) Five Year Assessment on Effectiveness of Provisions of Act and Recommended Legislative Changes.

(1) Upon request of the Panel Chairperson for information or assistance to facilitate the carrying out of this section, the Secretary of Commerce and the Secretary of the Interior shall promptly provide such information, unless otherwise prohibited by law.

(2) Space and Assistance.—The Secretary of the Interior shall provide the Panel with appropriate and adequate office space, together with such equipment, office supplies, and communications facilities and services as may be necessary for the operation of the Panel, and shall provide necessary maintenance services for such offices and the equipment and facilities located therein.

**SEC. 606. CONTINGENCY IN EVENT OF CONTINUING  
RESOLUTION FOR FISCAL YEAR 2015.**

The deadlines that apply to each respective Secretary, or agency, contained in sections 103(b), 103(d), 202, 204, and 205 shall be extended by the number of days that any resolution providing continuing appropriations for the Fish and Wildlife Service or NOAA Fisheries for fiscal year 2015 is in effect after January 1, 2015 if:

(1) such a resolution providing continuing appropriations for these agencies is enacted;

(2) the continuing resolution does not include funding for the agency actions prescribed in the sections of this Act specified above; and

(3) a funding shortfall remains for such agency actions after the Secretaries have consulted with the California Department of Water Resources, Central Valley Project and State Water Project contractors, and the Interagency Ecological Program.

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1 Water service and repayment contractors that receive water from the Delta Division or the San  
2 Luis Unit of the Central Valley Project shall be assessed, in addition to all other payments  
3 collected pursuant to section 3407 of the Central Valley Project Improvement Act (Public Law  
4 102–575; 106 Stat. 4     ), a per acre-foot surcharge, equal to 50% of the annual Restoration fund  
5 payments, for all Project water delivered during any year in which the allocation to such  
6 contractors is 50% to 74% and a per acre-foot surcharge, equal to 100% of the annual  
7 Restoration fund payments, delivered during any year in which the allocation to such contractors  
8 is 75% or greater, to be covered into the Restoration Fund.

9



**From:** Watts, John (Feinstein)

**Sent:** Tuesday, October 14, 2014 12:57 PM

**To:** 'Tom Birmingham'; Bernhardt, David L.

**Subject:** I am free to talk anytime before 730 edt (430 pdt)

**From:** Tom Birmingham  
**Sent:** Tuesday, October 14, 2014 1:32 PM  
**To:** 'Watts, John (Feinstein)'; 'Bernhardt, David L.'  
**Subject:** RE: I am free to talk anytime before 730 edt (430 pdt)

Let's call into (800) [REDACTED] - [REDACTED] pass code [REDACTED] at 4:45 your time.

---

**From:** Watts, John (Feinstein) [mailto:John\_Watts@feinstein.senate.gov]  
**Sent:** Tuesday, October 14, 2014 12:57 PM  
**To:** 'Tom Birmingham'; Bernhardt, David L.  
**Subject:** I am free to talk anytime before 730 edt (430 pdt)

**From:** Watts, John (Feinstein)  
**Sent:** Tuesday, October 14, 2014 1:33 PM  
**To:** 'Tom Birmingham'; 'Bernhardt, David L.'  
**Subject:** RE: I am free to talk anytime before 730 edt (430 pdt)

Sounds good – I will join.

---

**From:** Tom Birmingham [mailto:tbirmingham@westlandswater.org]  
**Sent:** Tuesday, October 14, 2014 4:32 PM  
**To:** Watts, John (Feinstein); 'Bernhardt, David L.'  
**Subject:** RE: I am free to talk anytime before 730 edt (430 pdt)

Let's call into (800) [REDACTED] - [REDACTED] pass code [REDACTED] at 4:45 your time.

---

**From:** Watts, John (Feinstein) [[mailto:John\\_Watts@feinstein.senate.gov](mailto:John_Watts@feinstein.senate.gov)]  
**Sent:** Tuesday, October 14, 2014 12:57 PM  
**To:** 'Tom Birmingham'; Bernhardt, David L.  
**Subject:** I am free to talk anytime before 730 edt (430 pdt)

**From:** Marklund, Chris

**Sent:** Wednesday, October 15, 2014 12:39 PM

**To:** 'Tom Birmingham'

**CC:** 'dbernhardt@bhfs.com'

**Subject:** Water Bill Questions

**Attachments:** image001.jpg; image002.png; image003.jpg; Valadao Master Comments.docx; Questions to Birmingham 10.15.docx

Tom,

I'm going through the Feinstein draft and have some questions I was hoping you or David could answer and comments I'm hoping you could take a look at. Rather than list them all in this email, I'm attaching two documents. One is a markup I've started that reflects changes we will likely request to the Feinstein bill based on input from other water agencies and base on my own read of the legislation. The changes to the original Feinstein text are tracked and the document is in order.

The second document is a list of questions or comments, or requests for assistance directed to Westlands.

I appreciate your input. Our goal is to button up all the comments and get them to Kiel by Monday.

Please don't hesitate to give me a call if you have any questions.

Chris

--

Chris Marklund

Legislative Director

Rep. David Valadao

1004 Longworth House Office Building

Washington, DC 20024

Ph: 202-225-4695

Fax: 202-225-3196

[Chris.Marklund@mail.house.gov](mailto:Chris.Marklund@mail.house.gov)

*Please follow Rep. David G. Valadao on Facebook, Twitter, and Instagram*



## Section 2

### Paragraph 13

(13) The 2008 smelt biological opinion and 2009 salmonid biological opinion contain reasonable and prudent alternatives intended to avoid the likelihood of jeopardy for listed species or resulting in the destruction or adverse modification of critical habitat of listed species~~protect listed fish species from being jeopardized by operation of the Central Valley Project and State Water Project and to prevent adverse modification of designated critical habitat;~~

### Paragraph 17

Data of pumping activities at the Central Valley Project and State Water Project delta pumps identifies that, on average from Water Year 2009 to Water Year 2014, take of Delta smelt is 80 percent less than allowable take levels under pumping activity takes 893 delta smelt annually with an authorized take level of 5,003 delta smelt annually according to the biological opinion issued December 15, 2008.

**Reason:** There are actually several years when the projects have taken no smelt and some years when they have taken many. It is the variability of take that makes the concept of more aggressive monitoring a possible solution that will allow for additional pumping. It is anticipated that in many years monitoring will show no danger of take and therefore allow us to pump more water since no fish will be at risk. Concern has been raised that this finding may be incorrectly interpreted as the projects expect to take 893 smelt every year. We know that isn't the right way to interpret averages, but it is the way the average reader interprets statistics like these.

## Section 3

### Paragraph 7

OMR FLOW OF -5000 CFS.—The term “OMR flow of -5000 cfs” means Old and Middle River flow of negative 5,000 cubic feet per second as measured~~limited~~ by—  
(A) the smelt biological opinion; and  
(B) the salmonid biological opinion.

**Reason:** As I understand it, the BiOps don't actually “measure” flow rates. This change has been requested by a local water agency.

## Title I

## Section 102

No later than October 1, 2015, the Director of Fish and Wildlife Service, in cooperation with other federal, state, and local agencies, shall use the best scientific and commercial data available to complete a review and ~~if warranted, a modification~~ modify of the incidental take level in the 2008 delta smelt biological opinion that takes into account all life stages, among other considerations,—

- (a) salvage information available over at least 18 years;
- (b) updated or more recently developed statistical models;
- (c) updated scientific and commercial data; and
- (d) the most recent information regarding the environmental factors driving delta smelt salvage.

**Reason:** Concern has been expressed that the section as currently written only applies to replacement of the adult take level. The direction to review and modify the incidental take permits should not be discretionary. Also, should apply to the juvenile and larval take levels as well.

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**Subsection 102(b) from the prior version should be retained.**

(b) Modified Incidental Take Level.—Unless the Director determines in writing that all or part of the requirements described in paragraphs (1) through (4) are not appropriate, the modified incidental take level described in subsection (a) shall—

- (1) be normalized for the abundance of prespawning adult Delta smelt using the Fall Midwater Trawl Index or other index;
- (2) be based on a simulation of the salvage that would have occurred from 1993 through 2012 if OMR flow had been consistent with the smelt biological opinion;
- (3) base that simulation on a correlation between annual salvage rates and historic water clarity and OMR flow during the adult salvage period; and
- (4) set the incidental take level as the 80 percent upper prediction interval derived from simulated salvage rates from 1993 through 2012.

## Section 103

(a) In General.—The Director shall use the best scientific and commercial data available to implement, continuously evaluate, and refine or amend, as appropriate, the reasonable and prudent alternative described in the 2008 delta smelt biological opinion, as amended, and any successor opinions, ~~shall be implemented consistent with current best scientific and commercial data available, and implementation shall be adjusted accordingly as new scientific and commercial data are developed.~~

(b) Increased Monitoring to Inform Real-time Operations. — ~~Contingent upon funding, the~~ Secretary shall conduct additional surveys, on an annual basis at the appropriate time of the year based on environmental conditions, in collaboration with other delta science interests.

(1) In implementing this section, after seeking public input, the Secretary shall —

(A) use the most appropriate survey methods for the detection of delta smelt to determine the extent that adult delta smelt are distributed in relation to certain levels of turbidity, or other environmental factors that may influence salvage rate; and

(B) use results from appropriate survey methods for the detection of delta smelt to determine how the Central Valley Project and State Water Project may be operated ~~more to efficiently to minimize salvage while maximizing~~ maximize rates of water export without causing jeopardy.

(2) During the period beginning on December 1, 2014 and ending March 31, 2015, and in each successive December through March period, if suspended sediment loads enter the Delta from the Sacramento River and the suspended sediment loads appear likely to raise turbidity levels in Old River north of the export pumps from values below 12 Nephelometric Turbidity Units (NTU) to values above 12 NTU, the Secretary shall—

(A) conduct daily monitoring using appropriate survey methods at locations including, but not limited to, the vicinity of Station 902 to determine the extent that adult Delta smelt are moving with turbidity toward the export pumps; and

(B) use results from the monitoring surveys at locations including, but not limited to, the vicinity of Station 902 to determine how increased trawling can inform daily real-time Central Valley Project and State Water Project operations to ~~minimize salvage while maximizing~~ maximize rates of water export without causing jeopardy.

(c) Periodic Review of Monitoring. — At least once every 5 years, or sooner if the Secretary determines it is appropriate, the Secretary shall—

(1) evaluate whether the monitoring program under subsection (b), combined with other monitoring programs for the Delta, is providing sufficient data to inform Central Valley Project and State Water Project operations to ~~minimize salvage while maximizing~~ maximize rates of water export without causing jeopardy; and

(2) determine whether the monitoring efforts should be changed in the short- or long-term to provide more useful data.

(d) Delta Smelt Distribution Study. —

(1) IN GENERAL. — No later than January 1, 2016, ~~contingent upon funding,~~ the Secretary, in collaboration with Delta science partners, shall implement new targeted sampling and monitoring specifically designed to understand delta smelt abundance, distribution, and the types of habitat occupied by delta smelt during all life stages.

(2) SAMPLING. — The Delta smelt distribution study shall, at a minimum—

(A) include recording water quality and tidal data;

(B) be designed to understand delta smelt abundance, distribution, habitat use, and movements throughout the Bay Delta during all seasons;

(C) consider areas not routinely sampled by existing monitoring programs, including wetland channels, near-shore water, depths below 35 feet, and shallow-water; and

(D) use the most biologically appropriate survey methods, including sampling gear suited to the type of sampling or monitoring.

(e) Scientifically supported implementation of Old and Middle River flow requirements.—In implementing the provisions of the smelt biological opinion, or any successor biological opinion, on reverse flow in the Old and Middle Rivers, the Secretary shall—

(1) consider the relevant provisions of the biological opinion or any successor biological opinion;

(2) manage reverse flow in Old and Middle Rivers as prescribed by the smelt biological opinion, or any successor biological opinion, to ~~minimize-maximize~~ water supply ~~reductions~~ for the Central Valley Project and the State Water Project by establishing OMR at -5,000 cfs unless information developed by the secretary under paragraphs (3) and (4) concludes that less negative OMR flows are necessary to avoid jeopardy;

(3) document in writing any significant facts about real-time conditions relevant to the determinations of reverse OMR flow rates, including—

(A) whether targeted real-time fish monitoring in Old River pursuant to this section, including monitoring in the vicinity of Station 902, indicates that ~~a significant increase in the salvage of jeopardy to the~~ delta smelt is imminent; and

(B) whether near-term forecasts with available salvage models show under prevailing conditions that OMR flow of -5000 cubic feet per second will cause ~~significantly increased take of jeopardy to the~~ delta smelt; and

(4) show in writing that any determination to manage OMR reverse flow at rates less negative than -5000 cubic feet per second is necessary to avoid ~~a negative impact on the long term survival~~ jeopardy of the Delta smelt, including an explanation of the data examined and the connection between those data and the choice made, after considering:

(A) the findings in paragraph (3);

(B) whether continued project operations over the remainder of the water year would exceed the incidental take level;

(C) the potential effects of entrainment on subsequent smelt ~~abundance~~ jeopardy, including consideration of the distribution of the population throughout the Delta,

(D) the water temperature,

(E) other factors relevant to the determination; and



(F) whether any alternative measures could have a lesser water supply impact.

(5) for any subsequent biological opinion, make the showing required in paragraph (4) for any determination to manage OMR reverse flow at rates less negative than the upper limit in the biological opinion.

(f) Memorandum of Understanding. No later than December 1, 2014, the Commissioner and the Director will execute a Memorandum of Understanding (MOU) to ensure that the smelt biological opinion is implemented in a manner that ~~minimizes-maximizes~~ water supply ~~losses~~ while complying with applicable laws and regulations. If that MOU alters any procedures set out in the biological opinion, there will be no need to reinstate consultation if those changes do not ~~have an adverse effect cause jeopardy~~ on listed species and the implementation of the MOU would not be a major change to implementation of the biological opinion. Any change to procedures that does not ~~create a new adverse effect cause jeopardy~~ to listed species will not alter application of the take exemption in the incidental take statement in the biological opinion under the Endangered Species Act, section 7(o)(2).

## Title II

### Section 202

(a) Trap and Barge Pilot Project to Increase Survivals Through the Delta.—The Assistant Administrator and the Commissioner shall, in collaboration with the U.S. Fish and Wildlife Service, the California Department of Fish and Wildlife and other interested parties, design, permit, implement and evaluate a pilot program to test the efficacy of an experimental trap and barge program to improve survival of juvenile salmonids emigrating from the San Joaquin watershed through the Delta, as further described below.

(1) Within 30 days of enactment, the Assistant Administrator shall convene a working group of the relevant agencies and other interested parties through which to develop and execute a plan for the design, budgeting, implementation and evaluation of such a pilot program, utilizing existing expertise on such trap and barge programs as may be available. Such plan shall detail a schedule and budget for the program, and identify the responsible parties for each element of the program.

(2) The Assistant Administrator shall provide an opportunity for public review and comment on the pilot program and also simultaneously seek an expeditious independent peer review of the program to improve its rigor and likelihood of success.

(3) Upon completion of (2), above, the Assistant Administrator shall complete the necessary design and evaluations of the pilot program and seek such authorizations and permits as may be required for its prompt implementation and evaluation by the Assistant Administrator, the Commissioner or such other parties as they determine most suitable.

(4) Subject to the availability of funding, the Assistant Administrator and the Commissioner shall seek to commence implementation of the pilot program in 2015 or as

soon thereafter as is possible, and shall conduct such pilot for such period of time as needed to evaluate the efficacy of the program to improve survivals across a range of environmental conditions.

(5) The Assistant Administrator and the Commissioner shall jointly report annually to the Senate Environment and Public Works Committee and the House Committee on Natural Resources their progress in implementing this section, estimated survival rates through the Delta for both juvenile salmonids that were barged through the Delta and those that were not barged, and if survival rates are significantly higher for barged fish as compared to other outmigrating smolts, the Assistant Administrator's and Commissioner's recommendations regarding broadening the pilot program and any relevant recommendations pursuant to section 203

**Commented [CM1]:** This looks like it is designed to bog down the entire process. Suggest keeping the Previous version of Sec. 202.

(b) Tagging studies.

(1) IN GENERAL.—The Assistant Administrator, in collaboration with other delta science partners, shall implement tagging studies, including acoustic telemetry and PIT tagging studies as appropriate, wherein habitat, predators, flow conditions, or other factors are experimentally altered and the behavior and survival of tagged juvenile salmonids are observed. Studies may also be conducted to aid in the understanding of Chinook salmon and steelhead abundance, distribution, and survival.

(2) SAMPLING.—The sampling—

(A) shall include recording water quality and tidal data;

(B) will be designed to aid in the understanding of salmonid abundance, distribution, and movements throughout the Bay Delta, including estimates of through Delta survival from Knights Landing or from Mossdale to Chipps Island; and

(C) will supplement, not supplant, ongoing acoustic tag and coded wire survival studies in the San Joaquin and Sacramento Rivers which the Assistant Administrator determines are crucial for trend monitoring.

## Section 203

(a) General directive. The reasonable and prudent alternative described in the salmonid biological opinion allows for and anticipates adjustments in operating criteria to reflect the best scientific and commercial data currently available, and authorizes efforts to test and evaluate improvements in operations that will meet applicable regulatory requirements and ~~enable improvements in maximize~~ water supply reliability. The Commissioner and the Assistant Administrator are hereby directed to utilize these authorities fully as described below.

(b) Annual reviews of certain operating criteria. No later than December 31, 2015, and at least annually thereafter,

(1) The Commissioner, in consultation with and with the assistance of the Assistant Administrator shall ~~commence annual efforts to~~ examine and identify adjustments to the initiation of Action IV.2.3 pertaining to negative OMR flows, subject to paragraph (5).

(2) The Commissioner, in consultation with and with the assistance of the Assistant Administrator, shall examine and identify adjustments in the timing, triggers or other

operational details relating to the implementation of pumping restrictions in Action IV.2.1 pertaining to the inflow to export requirements, subject to paragraph (5).

(3) Pursuant to the consultation and assessments carried out under paragraphs (1) and (2) of this subsection, the Commissioner and the Assistant Commissioner shall jointly make recommendations to the ~~Assistant Administrator~~secretaries on adjustments that, in the exercise of the adaptive management provisions of the salmonid biological opinion, can improve water supplies and are consistent with the requirements of applicable law and as further described in subsection (c).

(4) The Commissioner shall implement those adjustments for which the conditions under subsection (c) are met.

(5) The Assistant Administrator and the Commissioner shall review and identify adjustments to water supply restrictions in any successor biological opinion to the salmonid biological opinion, applying the provisions of this section to those water supply restrictions where there are references to Actions IV.2.1 and IV.2.3.

(c) Adjustments that shall be implemented. In receiving the recommendations under subsection (b), the secretaries shall direct the Commissioner and the Assistant Administrator to implement those recommendations the Assistant Administrator shall evaluate the effects of the recommended adjustments on listed species and shall recommend to the Commissioner adjustments for which:

(1) the net effect on listed species is equivalent to those of the underlying criteria, taking into account whatever actions or measures may be implemented in conjunction with the adjustments to mitigate its effects; and

(2) the effects of the adjustment can be reasonably expected to fall within the incidental take authorizations.

(d) Taking into account offsetting species survival benefits from other measures.

(1) When examining opportunities to offset the potential adverse effect of adjustments to operating criteria, the Commissioner and the Assistant Administrator shall take into account the potential salmonid survival improvements that are likely to result from other measures which, if implemented in conjunction with the adjustments, would offset the adverse effects of the adjustments. When considering offsetting measures, the Commissioner and the Assistant Administrator shall consider the type, timing and nature of the adverse effects to specific species and ensure that the measures provide equivalent overall benefits to the listed species in the aggregate, as long as the change in survival rates for each species remains consistent with the Endangered Species Act and implementing regulations.

(2) The offsetting measures could include actions implemented with the support of a substantial contribution from water districts that would benefit from the adjustments.

(e) Framework for examining opportunities to minimize or offset the potential adverse effect of adjustments to operating criteria.—Not later than December 31, 2015, and every five years thereafter, the Assistant Administrator shall, in collaboration with the Director of the California Department of Fish and Wildlife, based on the best scientific and commercial data available and for each listed salmonid species, issue estimates of the increase in through-Delta survival the Secretary expects to be achieved—

(1) with export restrictions as specified by Action IV.2.3 as compared to limiting OMR flow to a fixed rate of -5000 cubic feet per second within the time period Action IV.2.3 is applicable, based on a given rate of San Joaquin River inflow to the Delta and holding other relevant factors constant;

(2) with San Joaquin River inflow to export restrictions specified within Action IV.2.1 as compared to the export restrictions in the April/May period imposed by the State Water Resources Control Board decision D-1641, based on a given rate of San Joaquin River inflow to the Delta and holding other relevant factors constant;

(3) by a trap and barge program based on the experience of other systems to the extent they are comparable, and the study described in section 202, as that information becomes available;

(4) through physical habitat restoration improvements;

(5) through predation control programs;

(6) through temporary barriers, the Cross Channel Gates, and other projects affecting flow in the Delta;

(7) by salvaging fish that may be entrained near the entrance to Clifton Court Forebay; and

(8) by any other management measures that may provide equivalent or better benefits for listed species with improvements to water supplies.

(f) Survival estimates to be quantitative ~~to the maximum extent feasible~~.

(1) The Assistant Administrator shall make these estimates and determinations quantitatively ~~to the maximum extent feasible~~, such as a range of percentage increases in through-Delta survival that could result from the management measures, and if the scientific information is lacking for quantitative estimates, shall do so on qualitative terms based upon the best available science.

(2) If the Assistant Administrator provides qualitative estimates of the benefits to the species from one or more management measures, the Secretary shall ~~to the maximum extent feasible~~, rank the management measures described in subsection (e) in terms of their most likely expected contribution to increased through-Delta survival relative to the other measures.

(3) If at the time the Assistant Administrator conducts the analysis under subsection (b), the Secretary has not issued the estimates of increased through-Delta survival benefits from different management measures pursuant to subsection (e), the Secretary shall compare the benefits to the species from different management measures based on the best scientific and commercial data available at the time.

(g) Comparison of adverse consequences for alternative management measures of equal benefit to the salmon.—

(1) For the purposes of this subsection—

(A) The alternative management measure or combination of alternative management measures identified in paragraph (2) shall be known as the “equivalent alternative measure.”

(B) The existing measure or measures identified in subparagraphs (2)(A),(B),(C), or (D) shall be known as the “equivalent existing measure.”

(C) An “equivalent increase in through-Delta survival rates for listed salmonid species” shall mean an increase in through-Delta survival rates that is equivalent when considering the change in through-Delta survival rates for the listed salmonid species in the aggregate, and not necessarily the same change for each individual species, as long as the change in survival rates for each species remains consistent with the Endangered Species Act and implementing regulations.

(2) As part of the reviews of operating criteria pursuant to subsection (b), the Assistant Administrator shall determine whether any alternative management measures or combination of alternative management measures listed in subsection (e)(3) through (8) would provide an increase in through-Delta survival rates for listed salmonid species that is equivalent to the increase in through-Delta survival rates for listed salmonid species from the following:

(A) with export restrictions as specified by Action IV.2.3, as compared to limiting OMR flow to a fixed rate of -5000 cubic feet per second within the time period Action IV.2.3 is applicable;

(B) with export restrictions as specified by Action IV.2.3, as compared to a modification of Action IV.2.3 that would provide additional water supplies, other than that described in subparagraph (A);

(C) with San Joaquin River inflow to export restrictions specified within Action IV.2.1, as compared to the export restrictions in the April/May period imposed by the State Water Resources Control Board decision D-1641, or

(D) with San Joaquin River inflow to export restrictions specified within Action IV.2.1, as compared to a modification of Action IV.2.1 that would provide additional water supplies, other than that described in subparagraph (C).

(3) If the Assistant Administrator identifies an equivalent alternative measure pursuant to paragraph (2), the Assistant Administrator shall determine whether

(A) it is technically feasible and within federal jurisdiction to implement the equivalent alternative measure, and

(B) the adverse consequences of doing so are less than the adverse consequences of the equivalent existing measure, including a concise evaluation of the adverse consequences to other affected interests.

(4) If the Assistant Administrator makes the findings in subparagraph (3)(A) and (B), the Assistant Administrator and the Commissioner shall adjust the operating criteria in the salmonid biological opinion pursuant to this subsection to implement the equivalent alternative measure in place of the equivalent existing measure in order to increase water supplies to the greatest extent possible while maintaining a net combined effect of equivalent through-Delta survival rates for the listed salmonid species.

(h) Tracking adverse effects beyond the range of effects accounted for in the salmonid biological opinion and coordinated operation with smelt biological opinion.

(1) Among the adjustments to the operational criteria considered through the adaptive management process under this section, the Assistant Administrator and the Commissioner shall

(A) Evaluate the effects on listed salmonid species and water supply of the potential adjustment to operational criteria described in subparagraph (B); and

(B) Consider requiring that before some or all of the provisions of Actions IV.2.1. or IV.2.3 are imposed in any specific instance, the Assistant Administrator show that the implementation of these provisions in that specific instance is necessary to avoid additional adverse effects upon listed salmonid species beyond the range of effects analyzed and accounted for in the salmonid biological opinion

(2) The Assistant Administrator, the Director and the Commissioner, in coordination with State officials as appropriate, shall establish operational criteria to coordinate management of OMR flows under the smelt and salmonid biological opinions, in order to take advantage of opportunities to provide additional water supplies from the coordinated implementation of the biological opinions.

(i) Real-Time Monitoring and Management. The Assistant Administrator and the Commissioner shall, through the NMFS adaptive management salmonid biological opinion provisions, analyze whether date-certain triggers that limit OMR reverse flow to -5000 cubic feet per second could be adjusted to instead use real-time migration information on salmonids. If the analysis shows that the use of real-time information to trigger OMR flow limitations would improve water supply without causing significant adverse effects to Winter-run Chinook salmon, then such real-time management triggers shall be implemented.

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(i) If the quantitative estimates of through delta survival established by the Secretary for the management measures in (b)(2) exceed the through-Delta survival established for the RPAs, the Secretary shall implement the management measures in (b)(2) as a prerequisite to implementing the RPAs contained in the BiOps.

Section 204

Section 205

Section 206

Section 207

Title III

Section 301

Section 302

## Section 303

### (a) Water Supplies.—

(1) IN GENERAL.—In response to a declaration of a state of drought emergency by the Governor of California, or the Sacramento River Index reaches a level that results in a dry or critically dry water year within the Central Valley Project exists, or is imminent, and for the period of time such a drought declaration remains in effect and two subsequent normal or above normal water years have been recorded within the Central Valley Project, the Secretaries shall provide the maximum quantity of water supplies practicable to Central Valley Project agricultural, municipal and industrial, and refuge service and repayment contractors, State Water Project contractors, and any other tribe, locality or municipality in the State, by approving, consistent with applicable laws (including regulations), projects and operations to provide additional water supplies as quickly as practicable based on available information to address the emergency conditions.

(2) APPLICATION.—Paragraph (1) applies to projects or operations involving the Klamath Project if the projects or operations would benefit Federal water contractors in the State.

### (b) Administration.—In carrying out subsection (a), the Secretaries shall, consistent with applicable laws (including regulations)—

(1) issue all necessary permit decisions under the authority of the Secretaries not later than 30 days after the date on which the Secretaries receive a completed application from the State to place and use temporary barriers or operable gates in Delta channels to improve water quantity and quality for the State Water Project and the Central Valley Project south of Delta water contractors and other water users, on the condition that the barriers or operable gates—

(A) do not cause jeopardy to listed species within the Delta and provide benefits or have a neutral impact on for species protection ~~to~~ and in-Delta water user water quality; and

(B) are designed so that formal consultations under section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) are not necessary;

### (2) require the Director of the United States Fish and Wildlife Service and the Commissioner of Reclamation—

(A) to complete, not later than 30 days after the date on which the Director or the Commissioner receives a complete written request for water transfer associated with voluntarily fallowing nonpermanent crops in the State, all requirements under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) necessary to make final permit decisions on the request; and

(B) to grant any water transfer request described in subparagraph (A) to maximize the quantity of water supplies available for nonhabitat uses, on the condition that the fallowing and associated water transfer are in compliance with applicable Federal laws (including regulations);

(3) adopt a 1:1 inflow to export ratio for the increment of increased flow of the San Joaquin River, as measured as a 3-day running average at Vernalis during the period beginning on April 1, and ending on May 31, resulting from voluntary transfers and exchanges of water supplies, on the condition that a proposed transfer or exchange under this paragraph may only proceed if the Secretary of the Interior determines that the environmental effects of the proposed transfer or exchange are consistent with effects permissible under applicable law (including regulations), and Delta conditions are suitable to allow movement of the transfer water through the Delta consistent with Reclamation's permitted rights. Notwithstanding limitations on water transfers established by the United States Bureau of Reclamation's Biological Assessment dated August 2008, the United States Fish and Wildlife Service's Biological Opinion for delta smelt dated December 2008, the National Marine Fisheries biological opinion for salmonids and listed species dated June 2009, or any amendments to the foregoing, water transfers through the C.W. "Bill" Jones Pumping Plant or the Harvey O. Banks Pumping Plant may occur during any month provided water transfers comply with state law including the California Environmental Quality Act; and

(4) Provide additional priority for eligible WaterSMART projects that address drought conditions including projects that—

(A) provide emergency drinking and municipal water supplies to localities in a quantity necessary to meet minimum public health and safety needs;

(B) prevent the loss of permanent crops;

(C) minimize economic losses resulting from drought conditions; or

(D) provide innovative water conservation tools and technology for agriculture and urban water use that can have immediate water supply benefits.

(c) Accelerated Project Decision and Elevation.—

(1) IN GENERAL.— On request by the Governor of the State, the heads of Federal agencies shall use the expedited procedures under this subsection to make final decisions relating to a local, state or Federal project or operation to provide additional water supplies if the project's or operation's purpose is to provide relief for emergency drought conditions pursuant to subsections (a) and (b).

(2) REQUEST FOR RESOLUTION.—

(A) IN GENERAL.—On request by the Governor of the State, the head of a Federal agency referenced in paragraph (1), or the head of another Federal agency responsible for carrying out a review of a project, as applicable, the Secretary of the Interior shall convene a final project decision meeting with the heads of all relevant Federal agencies to decide whether to approve a project to provide relief for emergency drought conditions.

(B) MEETING.—The Secretary of the Interior shall convene a meeting requested under subparagraph (A) not later than 7 days after the date on which the meeting request is received.

(3) NOTIFICATION.—On receipt of a request for a meeting under paragraph (2), the Secretary of the Interior shall notify the heads of all relevant Federal agencies of the request, including information on the project to be reviewed and the date of the meeting.



(4) DECISION.—Not later than 10 days after the date on which a meeting is requested under paragraph (2), the head of the relevant Federal agency shall issue a final decision on the project, subject to subsection (e)(2).

(5) MEETING CONVENED BY SECRETARY.—The Secretary of the Interior may convene a final project decision meeting under this subsection at any time, at the discretion of the Secretary, regardless of whether a meeting is requested under paragraph (2).

(d) Application.—To the extent that a Federal agency, other than the agencies headed by the Secretaries, has a role in approving projects described in subsections (a) and (b), this section shall apply to those Federal agencies.

(e) Limitation.—Nothing in this section authorizes the heads of applicable Federal agencies to approve projects—

(1) that would otherwise require congressional authorization; or

(2) without following procedures required by applicable law.

(f) 2015 Drought Plan. The Secretaries of Commerce and the Interior, in consultation with appropriate State officials, shall develop a drought operations plan for 2015 that is consistent with the provisions of this section and other provisions of this Act intended to provide additional water supplies that could be of assistance during the current drought.

#### Section 304

(a) In General.—The Secretary of Commerce and the Secretary of the Interior shall jointly—

(1) authorize and implement activities to ensure that the Delta Cross Channel Gates remain open to the maximum extent practicable using findings from the United States Geological Survey on diurnal behavior of juvenal salmonids, timed to maximize the peak flood tide period and provide water supply and water quality benefits for the duration of the drought emergency declaration of the State and for two years thereafter, consistent with operational criteria and monitoring criteria developed pursuant to the Order Approving a Temporary Urgency Change in License and Permit Terms in Response to Drought Conditions of the California State Water Resources Control Board, effective January 31, 2014 (or a successor order) and other authorizations associated with it;

(2) with respect to the operation of the Delta Cross Channel Gates described in paragraph (1), collect data on the impact of that operation on—

(A) species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(B) water quality; and

(C) water supply;

(3) consistent with knowledge gained from activities carried out during 2014, collaborate with the California Department of Water Resources to install a deflection barrier at Georgiana Slough in coordination with Delta Cross Channel Gate diurnal operations to protect migrating salmonids;

**Commented [A2]:** Agencies are investigating the feasibility of diurnal operations.

(4) evaluate the combined salmonid survival in light of activities carried out pursuant to paragraphs (1) through (3) in deciding how to operate the Delta Cross Channel gates to enhance salmonid survival and water supply benefits; and

(5) not later than May 15, 2015, submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives a written report on the extent to which the gates are able to remain open.

(b) Recommendations.—After assessing the information collected under subsection (a), the Secretary of the Interior shall recommend revisions to the operation of the Delta Cross-Channel Gates, to the Central Valley Project, and to the State Water Project, including, if appropriate, any reasonable and prudent alternative contained in the biological opinion issued by the National Marine Fisheries Service on June 4, 2009, that are likely to produce water supply benefits without causing fishery jeopardy or negatively impacting water quality, ~~and water supply benefits~~. The Secretary shall also coordinate with the State Water Resources Control Board to seek consistent direction for the operation of the Delta Cross-Channel Gates under federal and state law, including Water Right Decision 1641.

#### Section 305

#### Section 306

#### Section 307

#### Section 308

The Secretaries shall, consistent with applicable laws (including regulations)—

(1) ~~to the maximum extent practicable, based on the availability of water and without causing land subsidence or violating water quality standards —~~

(A) help meet the contract water supply needs of Central Valley Project refuges through the improvement or installation of water conservation measures, water conveyance facilities, and wells to use groundwater resources, on the condition that those activities may only be accomplished by using funding made available under the Water Assistance Program or the WaterSMART program of the Department of the Interior; and

(B) make available to Central Valley Project contractors a quantity of Central Valley Project surface water obtained from the activities carried out under subparagraph (A);

(2) ~~contingent upon funding, if~~ in coordination with the Secretary of Agriculture, enter into an agreement with the National Academy of Sciences to conduct a comprehensive study, to be completed not later than 1 year after the date of enactment of this Act, on the effectiveness and environmental impacts of saltcedar biological control efforts on increasing water supplies and improving riparian habitats of the Colorado River and its principal tributaries, in the State and elsewhere;

(3) in coordination with the California Department of Water Resources and the California Department of Fish and Wildlife, implement offsite upstream projects in the Delta and

upstream Sacramento River and San Joaquin basins that offset the effects on species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) due to activities carried out pursuant this Act, as determined by the Secretaries;

(4) manage reverse flow in the Old and Middle Rivers as prescribed by the biological opinions issued by the United States Fish and Wildlife Service on December 15, 2008, for Delta smelt and by the National Marine Fisheries Service on June 4, 2009, for salmonids, or any successor biological opinions, to ~~minimize-maximize~~ water supply ~~reductions~~ for the Central Valley Project and the State Project, and issue guidance no later than December 31, 2015 directing their employees to take all steps necessary to manage flow in accordance with this paragraph;

(5) as soon as practicable after the date of enactment of this Act and pursuant to existing authority available to the Secretary of the Interior, participate in, issue grants, or otherwise provide funding for pilot projects to increase water in reservoirs in regional river basins experiencing extreme, exceptional, or sustained drought that have a direct impact on the water supply of the State, including the Colorado River Basin, on the condition that any participation, grant, or funding by the Secretary of the Interior with respect to the Upper Division shall be with or to the respective State; and

(6) use all available scientific tools to identify any changes to real-time operations of the Bureau of Reclamation, State, and local water projects that could result in the availability of additional water supplies.

#### Section 309

##### (a) Findings:

(1) During the 2014 water year, operations of the Central Valley Project and the State Water Project, the incidental take of adult Delta smelt was zero; of juvenile Delta smelt, 78 (7.7% of the incidental take limit); of winter run chinook, 339 (1.4% of the incidental take limit); of spring run chinook, zero; and of steelhead, 261 (8.7% of the incidental take limit).

(2) The Central Valley Project and State Water Project exceeded an Old and Middle River flow of -5,000 cubic feet per second over a 14-day average for brief periods after three storm events in February and March 2014, as a result of increased pumping, but did not cause substantially increased take of smelt or salmon.

(3) Hydrological conditions in dry years, such as the 2014 water year, have not triggered water pumping restrictions pursuant to the 2008 smelt biological opinion.

(4) The Secretaries should be allowed more flexibility to increase pumping levels without causing significant risk to the listed species or weakening other environmental protections.

(5) Given California's severe drought conditions, significant groundwater withdrawals for irrigation due to lack of surface water supplies, and the depletion of water supplies in reservoirs, it is imperative that the Secretaries exercise the flexibility provided herein to capture the maximum amount of storm flows when and if they occur in the 2015 water year, and provide for the diversion of those supplies to the Central Valley Project and State Water Project so that farms, businesses, and homes in drought-stricken areas will have an opportunity to bolster their meager supplies when water is available.

(b) In general. Consistent with avoiding jeopardy in the short-term upon listed fish species beyond the range of those authorized under the Endangered Species Act and other environmental protections under subsection (e), the Secretaries shall authorize the Central Valley Project and the State Water Project, combined, to operate at levels that result in Old and Middle River flows at up to -7500 cubic feet per second (based on United States Geological Survey gauges on Old and Middle Rivers) daily average for up to 21 cumulative days after October 1, 2014, and after October 1 of each subsequent year, as described in subsection (c).

(c) Days of temporary operational flexibility. The temporary operational flexibility described in subsection (b) shall be authorized on days that the California Department of Water Resources determines the daily average river flow of the Sacramento River is at, or above, 17,000 cubic feet per second as measured at the Sacramento River at Freeport gauge maintained by the United States Geologic Survey.

(d) Compliance with ESA authorizations. In carrying out this section, the Secretaries may continue to impose any requirements under the biological opinions during any period of temporary operational flexibility as they determine are reasonably necessary to avoid additional adverse effects or jeopardy on listed fish species beyond the range of those authorized under the Endangered Species Act.

(e) Other environmental protections.

(1) The Secretaries' actions under this section shall be consistent with applicable regulatory requirements under state law, including State Water Resources Control Board Decision 1641, as it may be implemented in any given year;

(2) During the first flush of sediment out the Delta during the 2015 water year, OMR flow may be managed at rates less negative than -5000 cubic feet per second for a minimum duration to avoid movement of adult delta smelt (*Hypomesus transpacificus*) to areas in the southern Delta that would be likely to increase entrainment at Central Valley Project and State Water Project pumping plants;

(3) This section shall not have any effect on the applicable requirements of the salmonid biological opinion from April 1 to May 31, unless the Secretary of Commerce finds that some or all of such applicable requirements may be adjusted during this time period to provide emergency water supply relief without resulting in additional adverse effects beyond those authorized under the Endangered Species Act.

(4) During operations under this section, the Commissioner of Reclamation, in coordination with the Fish and Wildlife Service, National Marine Fisheries Service, and California Department of Fish and Wildlife, shall undertake a monitoring program and other data gathering to insure take limits levels are not exceeded, and to identify potential negative impacts and actions necessary to mitigate any impacts of the temporary operational flexibility to species listed as threatened or endangered under the Endangered Species Act, 16 U.S.C. 1531-1544; and

(5) The Commissioner is authorized to take any action, including the transfer of appropriated funds between accounts that, in the Commissioner's judgment, are necessary to mitigate the impacts of such operations as long as any such mitigation is consistent with the requirements of this section.

(f) Technical adjustments to target period. If, before temporary operational flexibility has been implemented on 21 cumulative days, the Secretaries operate the Central Valley Project and the State Water Project combined at levels that result in Old and Middle River flows less negative than -7500 cubic feet per second during days of temporary operational flexibility as defined in subsection (c), the duration of such operation shall not be counted toward the 21 cumulative days specified in subsection (b).

(g) Emergency consultation; effect on running averages.

(1) If necessary to implement the provisions of this section, the Commissioner shall use the emergency consultation procedures under the Endangered Species Act and its implementing regulation at 50 CFR 402.05 to temporarily adjust the operating criteria under the biological opinions, solely for the 21 days of temporary operational flexibility—

(A) no more than necessary to achieve the purposes of this section consistent with the environmental protections in subsections (d) and (e); and

(B) including, as appropriate, adjustments to ensure that the actual flow rates during the periods of temporary operational flexibility do not count toward the 5-day and 14-day running averages of tidally filtered daily Old and Middle River flow requirements under the biological opinions.

(2) Following the conclusion of the 21 days of temporary operational flexibility, the Commissioner shall not reinitiate consultation on these adjusted operations if the effects on listed fish species of these operations under this section remain within the range of those authorized under the Endangered Species Act.

(h) Level of detail required for analysis. In articulating the determinations required under this section, the Secretaries shall fully satisfy the requirements herein but shall not be expected to provide a greater level of supporting detail for the analysis than feasible to provide within the short time frame permitted for timely decision-making in response to changing conditions in the Delta.

~~(i) Duration. This section shall expire on September 30, 2015.~~

#### **Section 310**

#### **Section 311**

#### **Section 312**

### **Title IV**

- I notice the newest draft contains the Jeopardy definition we discussed previously. However, I'm told that the use of the term "jeopardy" has been reduced appreciably within the bill itself. Is that the case? If so, could/should the bill be strengthened by reinserting "jeopardy" into the bill where appropriate. Can you provide suggestions on where Jeopardy could be inserted into the bill to strengthen the intended result?
- Section 102(a) has been revised significantly, Sec 102(b) from the August draft has been omitted. Are you OK with these changes, or would you suggest changes be made to Sec 102?
- The following change to Section 102 has been suggested to our office, what are your thoughts:
  - No later than October 1, 2015, the Director of Fish and Wildlife Service, in cooperation with other federal, state, and local agencies, shall use the best scientific and commercial data available to complete a review and, ~~if warranted, a modification of the method used to calculate~~ the incidental take level in the 2008 delta smelt biological opinion that takes into account all life stages, among other considerations,—
- Sec 103(a) seems to have been watered down a bit. Some have suggested strengthening the language to be more prescriptive toward the Director. What are your thoughts on the following?
  - (a) In General.—The Director shall use the best scientific and commercial data available to implement, continuously evaluate, and refine or amend, as appropriate, the reasonable and prudent alternative described in the 2008 delta smelt biological opinion, as amended, and any successor opinions.
- Sec 103 has been altered significantly from the previous draft. Are you guys happy with the changes? Are there alterations you would make? I want to strike "contingent upon funding" from all the subsections. Are there other alterations you feel would strengthen the language? I notice it no longer prescribes specific sampling methods or uses the term "jeopardy".
- I believe the previous draft included language making determinations in Section 103(e)(3)(B) a final action. Current draft does not. Do you support this change or would you suggest different language here, or elsewhere in Sec 103, to improve the section?
- Sec 103 (f) the MOU is a new addition. Are you OK with it? Are there changes you would suggest?
- Sec 202, as written, looks like it will bog down in bureaucracy without actually initiating the trap and barge program. I'm inclined to suggest retaining the previous version's iteration of Sec 202(a), unless you feel the same goal can be accomplished by editing current Sec. 202. If so, can you provide suggested edits?
- Do you support the changes made to Section 202 (b) "Tagging Studies"
- The Experimental Variability section of 202 was deleted, are you OK with that deletion?
- Sec. 203 also appears to have been altered significantly. Are you OK with the changes as proposed by Senator Feinstein? Do you have any concerns or would you suggest additional changes, or reinclusion of language from the previous draft? Specifically regarding where "jeopardy" could come into play in this section.
- Sec. 309. How would we rewrite this section so that it applied to the beginning of every water year? Took a stab in the master comments.
-

**From:** Watts, John (Feinstein)  
**Sent:** Wednesday, October 15, 2014 12:55 PM  
**To:** 'Tom Birmingham'; Bernhardt, David L.  
**Subject:** Can you do a call at 615 or 630 eastern time?

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**Subject:** RE: Can you do a call at 615 or 630 eastern time?

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**Subject:** Re: Can you do a call at 615 or 630 eastern time?

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**CC:** tbirmingham@westlandswater.org  
**Subject:** Call today?

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**From:** Tom Birmingham  
**Sent:** Thursday, October 16, 2014 8:36 AM  
**To:** 'Watts, John (Feinstein)'  
**Subject:** RE: Call today?

Let's talk at 4:30 EDT (1:30 PDT). Please call (800) [REDACTED] - [REDACTED] pass code [REDACTED]

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[REDACTED]

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**From:** Watts, John (Feinstein)  
**Sent:** Thursday, October 16, 2014 10:21 AM  
**To:** 'Tom Birmingham'  
**Subject:** RE: Call today?

Sounds good.

---

**From:** Tom Birmingham [mailto:tbirmingham@westlandswater.org]  
**Sent:** Thursday, October 16, 2014 11:36 AM  
**To:** Watts, John (Feinstein)  
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**From:** Tom Birmingham  
**Sent:** Thursday, October 16, 2014 11:38 AM  
**To:** 'Marklund, Chris'  
**CC:** dbernhardt@bhfs.com  
**Subject:** RE: Water Bill Questions

Chris,

I am tied up until approximately 3:30 this afternoon, Pacific time. Can I call you after that?

Tom

---

**From:** Marklund, Chris [mailto:Chris.Marklund@mail.house.gov]  
**Sent:** Wednesday, October 15, 2014 12:39 PM  
**To:** 'Tom Birmingham'  
**Cc:** 'dbernhardt@bhfs.com'  
**Subject:** Water Bill Questions

Tom,

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The second document is a list of questions or comments, or requests for assistance directed to Westlands.

I appreciate your input. Our goal is to button up all the comments and get them to Kiel by Monday.

Please don't hesitate to give me a call if you have any questions.

Chris

--

Chris Marklund  
Legislative Director  
Rep. David Valadao  
1004 Longworth House Office Building  
Washington, DC 20024  
Ph: 202-225-4695  
Fax: 202-225-3196  
[Chris.Marklund@mail.house.gov](mailto:Chris.Marklund@mail.house.gov)

*Please follow Rep. David G. Valadao on Facebook, Twitter, and Instagram*



**From:** Marklund, Chris  
**Sent:** Thursday, October 16, 2014 11:43 AM  
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**CC:** 'dbernhardt@bhfs.com'  
**Subject:** RE: Water Bill Questions

I'll be away from my desk at 3:30 PDT, but should be available. I'll also be at my desk most of the day tomorrow with the exception of 7:30 to 8:30 AM PDT. If you want to go over text, that may be preferable.

Chris

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**From:** Watts, John (Feinstein)

**Sent:** Thursday, October 16, 2014 1:32 PM

**To:** 'Tom Birmingham'; Bernhardt, David L.

**Subject:** On phone with Bezdek -- please give me 5 minutes

**From:** Watts, John (Feinstein)  
**Sent:** Thursday, October 16, 2014 2:08 PM  
**To:** Bernhardt, David L.; 'Tom Birmingham'  
**Subject:** Current Version of Leg Counsel-Scrubbed Language  
**Attachments:** END14465\_XML.doc

Title: To provide drought relief in the State of California, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

## SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the “California Drought Relief Act of 2014”.

(b) Table of Contents.—The table of contents of this Act is as follows:

Sec.1.Short title; table of contents.

Sec.2.Findings.

Sec.3.Definitions.

## TITLE I—ADJUSTING DELTA SMELT MANAGEMENT BASED ON INCREASED REAL-TIME MONITORING AND UPDATED SCIENCE

Sec.101.Definition of Secretary.

Sec.102.Revision of incidental take level calculation for Delta smelt to reflect new science.

Sec.103.Factoring increased real-time monitoring and updated science into Delta smelt management.

## TITLE II—ENSURING SALMONID MANAGEMENT IS RESPONSIVE TO NEW SCIENCE

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## 11 TITLE IV—INCREASING WATER STORAGE

- 12 Sec.401.Findings.
- 13 Sec.402.Calfed storage feasibility studies.
- 14 Sec.403.Water storage project construction.
- 15 Sec.404.Other storage feasibility studies.
- 16 Sec.405.Dam safety projects with increased storage component.
- 17 Sec.406.Updating water operations manuals for non-Federal projects.
- 18 Sec.407.Central Valley Project.

## 19 TITLE V—WATER RIGHTS PROTECTIONS

- 20 Sec.501.Protections for State Water Project contractors.
- 21 Sec.502.Area of origin protections.
- 22 Sec.503.No redirected adverse impacts.
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## 24 TITLE VI—MISCELLANEOUS

- 25 Sec.601.Authorized service area.
- 26 Sec.602.Rescheduled water.
- 27 Sec.603.Fisheries disaster declaration.
- 28 Sec.604.Restoration Fund Advisory Board.
- 29 Sec.605.Water Operations Review Panel.
- 30 Sec.606.Contingency in event of continuing resolution for fiscal year 2015.

## 31 SEC. 2. FINDINGS.

1 Congress finds the following:

2 (1) As established in the Proclamation of a State of Emergency issued by the Governor of  
3 the State on January 17, 2014, the State is experiencing record dry conditions.

4 (2) Extremely dry conditions have persisted in the State since 2012, and the drought  
5 conditions are likely to persist into the future.

6 (3) As of September 2014, the forecast of the National Weather Service does not show a  
7 high likelihood of the State experiencing significant precipitation for the remainder of the  
8 year.

9 (4) The water supplies of the State are at record-low levels, as indicated by the fact that  
10 all major Central Valley Project reservoir levels were at 20 to 35 percent of capacity as of  
11 September 25, 2014.

12 (5) The lack of precipitation has been a significant contributing factor to the 6,091 fires  
13 experienced in the State as of September 15, 2014, and which covered nearly 400,000 acres.

14 (6)(A) According to a study released by the University of California, Davis in July 2014,  
15 the drought has led to—

16 (i) the fallowing of 428,000 acres of farmland;

17 (ii) the loss of \$810,000,000 in crop revenue;

18 (iii) the loss of \$203,000,000 in dairy and other livestock value; and

19 (iv) the increase of groundwater pumping costs by \$454,000,000.

20 (B) The statewide economic costs are estimated to be \$2,200,000,000, with over 17,000  
21 seasonal and part-time agricultural jobs lost.

22 (7) Level II water deliveries under the Central Valley Project Improvement Act (Public  
23 Law 102–575; 106 Stat. 4706) and amendments made by that Act to refuges have also  
24 declined by 25 percent in the north of the Delta region, and by 35 percent in the south of the  
25 Delta region.

26 (8) Only  $\frac{1}{6}$  of the usual acres of rice fields are being flooded, which leads to a  
27 significant decline in habitat for migratory birds and an increased risk of disease at the  
28 remaining wetland due to overcrowding of the birds.

29 (9) The drought of 2013 through 2014 constitutes a serious emergency that poses  
30 immediate and severe risks to human life and safety and to the environment throughout the  
31 State.

32 (10) The serious emergency described in paragraph (4) requires—

33 (A) immediate and credible action that respects the complexity of the water system  
34 of the State and the importance of the water system to the entire State; and

35 (B) policies that do not pit stakeholders against one another, which history shows  
36 only leads to costly litigation that benefits no one and prevents any real solutions.

37 (11) Federal law (including regulations) directly authorizes expedited decisionmaking  
38 procedures and environmental and public review procedures to enable timely and  
39 appropriate implementation of actions to respond to the type and severity of the serious



1 emergency described in paragraph (4).

2 (12) The serious emergency described in paragraph (4) fully satisfies the conditions  
3 necessary for the exercise of emergency decisionmaking, analytical, and public review  
4 requirements under—

5 (A) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

6 (B) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

7 (C) water control management procedures of the Corps of Engineers described in  
8 section 222.5 of title 33, Code of Federal Regulations (including successor  
9 regulations); and

10 (D) the Reclamation States Emergency Drought Relief Act of 1991 (Public Law  
11 102–250; 106 Stat. 53).

12 (13) The smelt biological opinion and salmonid biological opinion contain reasonable  
13 and prudent alternatives to protect listed fish species from being jeopardized by operation of  
14 the Central Valley Project and State Water Project and to prevent adverse modification of  
15 designated critical habitat.

16 (14) The effect of those reasonable and prudent alternatives in the biological opinions  
17 may restrict the quantity of water pumping that can occur to deliver water for agricultural,  
18 municipal, industrial, groundwater, and refuge uses in the State.

19 (15) Data on the difference between water demand and reliable water supplies for various  
20 regions south of the Delta, including the San Joaquin Valley, indicate there is a significant  
21 annual gap between reliable water supplies to meet agricultural, municipal, industrial,  
22 groundwater, and refuge water needs within the South of Delta and Friant Division of the  
23 Central Valley Project and the State Water Project south of the Sacramento-San Joaquin  
24 River Delta and north of the Tehachapi mountain range and the demands of those areas.

25 (16) The gap described in paragraph (15) varies depending on the methodology of the  
26 analysis performed, but can be represented in the following ways:

27 (A) For Central Valley Project South of Delta water service contractors, if it is  
28 assumed that a water supply deficit is the difference between the quantity of water  
29 available for allocation and the maximum contract quantity of water, particularly in  
30 years closer to the date of enactment of this Act, the water supply deficits that have  
31 developed from 1992 to 2014 as a result of changes aside from natural variations in  
32 hydrology during this timeframe range between 720,000 and 1,100,000 acre-feet.

33 (B) For Central Valley Project and State Water Project water service contractors  
34 south of the Delta and north of the Tehachapi mountain range, if it is assumed that a  
35 water supply deficit is the difference between reliable water supplies, including  
36 maximum water contract deliveries, safe yield of groundwater, safe yield of local and  
37 surface supplies and long-term contracted water transfers, and water demands,  
38 including water demands from agriculture, municipal and industrial uses, and refuge  
39 contractors, the water supply deficit ranges between approximately 2,500,000 to  
40 2,700,000 acre-feet.

41 (C)(i) The California Water Plan evaluated outcomes under current conditions under

1 198 combinations of climate and growth scenarios, projecting a range of urban and  
2 agricultural reliability into the future.

3 (ii) Reliability under this subparagraph is defined as the percentage of years in  
4 which demand is sufficiently met by supply.

5 (iii) Reliability across a range of futures within the San Joaquin Valley can be  
6 presented as—

7 (I) for the San Joaquin River Hydrologic Region, as defined in the California  
8 Water Plan—

9 (aa) urban supply reliability ranges between 90 and 100 percent, with a  
10 mean reliability across futures in the high 90th percentile; and

11 (bb) agricultural supply reliability ranges between 70 and 100 percent,  
12 with a mean reliability across futures in the mid-90th percentile; and

13 (II) for the Tulare Lake Hydrologic Region, as defined in the California Water  
14 Plan—

15 (aa) urban supply reliability ranges between 70 and 100 percent, with a  
16 mean reliability across futures in the mid-90th percentile; and

17 (bb) agricultural supply reliability ranges between 20 and 100 percent,  
18 with a mean reliability across futures in the low 70th percentile.

19 (17) Since the issuance of the biological opinions, recent studies have raised questions  
20 about the benefits to endangered salmonid populations from water pumping restrictions,  
21 including the following:

22 (A)(i) Expert panel reviews have concluded that instantaneous water velocities in  
23 the tidal Delta affect juvenile salmonids, not tidally average flows, as previously  
24 assumed.

25 (ii) Based on instantaneous water velocity modeling, water exports have a much  
26 smaller area of effect than was previously believed.

27 (B) Tagging studies conducted since 1993 (representing more than 28,000,000 fish)  
28 demonstrate that the proportion of Sacramento Basin origin Chinook salmon entrained  
29 into the pumping facilities (including prescreen losses) are on average less than \1/10\  
30 1 percent.

31 (C) Telemetric studies of Sacramento Basin and San Joaquin Basin origin juvenile  
32 Chinook salmon have not demonstrated any significant adverse effect from water  
33 exports on fish survival.

34 (18) Data of pumping activities at the Central Valley Project and State Water Project  
35 Delta pumps identify that, on average from Water Year 2009 to Water Year 2014, pumping  
36 activity takes 893 Delta smelt annually with an authorized take level of 5,003 Delta smelt  
37 annually, according to the biological opinion issued December 15, 2008.

38 (19) It is worth exploring whether there is a way to implement the biological opinions  
39 that would preserve the protections afforded endangered fish and simultaneously increase  
40 water deliveries to the Central Valley Project and State Water Project without weakening

environmental laws or protections.

(20) In 2014, better information exists than was known in 2008 concerning—

(A) conditions and operations that may or may not lead to high salvage events that jeopardize the fish populations; and

(B) what alternative management actions can be taken to avoid jeopardy.

(21) Alternative management strategies, such as trapping and barging juvenile salmon through the Delta, removing nonnative species, enhancing habitat, and monitoring fish movement and location in real-time, can contribute significantly to protecting and recovering these endangered fish species, and at potentially lower costs to water supplies.

(22) Resolution of fundamental policy questions concerning the extent to which application of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) affects the operation of the Central Valley Project and State Water Project is the responsibility of Congress.

### SEC. 3. DEFINITIONS.

In this Act:

(1) ASSISTANT ADMINISTRATOR.—The term “Assistant Administrator” means the Assistant Administrator for the National Marine Fisheries Service.

(2) COMMISSIONER.—The term “Commissioner” means the Commissioner of the Bureau of Reclamation.

(3) DELTA.—The term “Delta” means the Sacramento-San Joaquin Delta and the Suisun Marsh, as defined in sections 12220 and 29101 of the California Public Resources Code.

(4) DELTA SMELT.—The term “Delta smelt” means the fish species with the scientific name *Hypomesus transpacificus*.

(5) DIRECTOR.—The term “Director” means the Director of the United States Fish and Wildlife Service.

(6) EXPORT PUMPING RATES.—The term “export pumping rates” means the rates of pumping at the W.C. “Bill” Jones Pumping Plant and the Harvey O. Banks Pumping Plant, in the southern Delta.

(7) JEOPARDY.—The term “jeopardy” means to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.

(8) LISTED FISH SPECIES.—The term “listed fish species” means—

(A) listed salmonid species; and

(B) the Delta smelt.

(9) LISTED SALMONID SPECIES.—The term “listed salmonid species” means—

(A) natural origin steelhead;

(B) natural origin genetic spring run Chinook; and

(C) genetic winter run Chinook salmon.

(10) OMR.—The term “OMR” means the Old and Middle River in the Delta.

(11) OMR FLOW OF ^5000 CFS.—The term “OMR flow of ^5000 cfs” means Old and Middle River flow of negative 5,000 cubic feet per second as measured by—

(A) the smelt biological opinion; and

(B) the salmonid biological opinion.

(12) SALMONID BIOLOGICAL OPINION.—The term “salmonid biological opinion” means the biological opinion issued by the National Marine Fisheries Service on June 4, 2009, as amended, and any successor biological opinion.

(13) SMELT BIOLOGICAL OPINION.—The term “smelt biological opinion” means the biological opinion on the Long-Term Operational Criteria and Plan for coordination of the Central Valley Project and State Water Project issued by the United States Fish and Wildlife Service on December 15, 2008, as amended, and any successor biological opinion.

(14) STATE.—The term “State” means the State of California.

(15) STATE WATER PROJECT.—The term “State Water Project” means the water project described by California Water Code section 11550 et seq., and operated by the California Department of Water Resources.

## TITLE I—ADJUSTING DELTA SMELT MANAGEMENT BASED ON INCREASED REAL-TIME MONITORING AND UPDATED SCIENCE

### SEC. 101. DEFINITION OF SECRETARY.

In this title, the term “Secretary” means the Secretary of the Interior.

### SEC. 102. REVISION OF INCIDENTAL TAKE LEVEL CALCULATION FOR DELTA SMELT TO REFLECT NEW SCIENCE.

Not later than October 1, 2015, the Director, in cooperation with other Federal, State, and local agencies, shall use the best scientific and commercial data available to complete a review and, if warranted, a modification of the incidental take level in the smelt biological opinion that takes into account, among other considerations—

(1) salvage information available over at least the 18-year period ending on the date of enactment of this Act;

(2) updated or more recently developed statistical models;

(3) updated scientific and commercial data; and

(4) the most recent information regarding the environmental factors driving Delta smelt salvage.

## SEC. 103. FACTORING INCREASED REAL-TIME MONITORING AND UPDATED SCIENCE INTO DELTA SMELT MANAGEMENT.

### (a) Implementation of Alternative.—

(1) IN GENERAL.—The reasonable and prudent alternative described in the smelt biological opinion shall be implemented consistent with current best scientific and commercial data available.

(2) ADJUSTMENTS.—Implementation shall be adjusted accordingly as new scientific and commercial data is developed.

### (b) Increased Monitoring to Inform Real-time Operations.—

(1) IN GENERAL.—Subject to the availability of funding, the Secretary, in consultation with Delta science partners, shall conduct additional surveys to carry out this section on an annual basis at the appropriate time of the year based on environmental conditions.

(2) ADMINISTRATION.—In carrying out this section, after seeking public input, the Secretary shall —

(A) use the most appropriate survey methods for the detection of Delta smelt to determine the extent that adult Delta smelt are distributed in relation to certain levels of turbidity, or other environmental factors that may influence salvage rate; and

(B) use results from appropriate survey methods for the detection of Delta smelt to determine how the Central Valley Project and State Water Project may be operated more efficiently to minimize salvage while maximizing rates of water export.

(3) ADDITIONAL MONITORING.—Effective during the period beginning on December 1, 2014, and ending March 31, 2015, and in each successive December through March period, if suspended sediment loads enter the Delta from the Sacramento River and the suspended sediment loads appear likely to raise turbidity levels in Old River north of the export pumps from values below 12 Nephelometric Turbidity Units to values above 12 Nephelometric Turbidity Units, the Secretary shall—

(A) conduct daily monitoring using appropriate survey methods at locations, including the vicinity of Station 902, to determine the extent that adult Delta smelt are moving with turbidity toward the export pumps; and

(B) use results from the monitoring surveys at locations, including the vicinity of Station 902, to determine how increased trawling can inform daily real-time Central Valley Project and State Water Project operations to minimize salvage while maximizing rates of water export.

### (c) Periodic Review of Monitoring.—At least once every 5 years or earlier if the Secretary determines appropriate, the Secretary shall—

(1) evaluate whether the monitoring program under subsection (b), combined with other monitoring programs for the Delta, is providing sufficient data to inform Central Valley Project and State Water Project operations to minimize salvage while maximizing rates of

1 water export; and

2 (2) determine whether the monitoring efforts should be changed in the short- or long-term  
3 to provide more useful data.

4 (d) Delta Smelt Distribution Study.—

5 (1) IN GENERAL.—Not later than January 1, 2016, subject to the availability of funding,  
6 the Secretary, in consultation with Delta science partners, shall implement new targeted  
7 sampling and monitoring specifically designed to understand Delta smelt abundance,  
8 distribution, and the types of habitat occupied by Delta smelt during all life stages.

9 (2) SAMPLING.—The Delta smelt distribution study required under paragraph (1) shall, at  
10 a minimum—

11 (A) include recording water quality and tidal data;

12 (B) be designed to understand Delta smelt abundance, distribution, habitat use, and  
13 movements throughout the Delta during all seasons;

14 (C) consider areas not routinely sampled by existing monitoring programs, including  
15 wetland channels, near-shore water, depths below 35 feet, and shallow-water; and

16 (D) use the most biologically appropriate survey methods, including sampling gear  
17 suited to the type of sampling or monitoring.

18 (e) Scientifically Supported Implementation of Old and Middle River Flow Requirements.—In  
19 implementing the provisions of the smelt biological opinion on reverse flow in the Old and  
20 Middle Rivers, the Secretary shall—

21 (1) consider the relevant provisions of the smelt biological opinion;

22 (2) manage reverse flow in Old and Middle Rivers, as prescribed by the smelt biological  
23 opinion, to minimize water supply reductions for the Central Valley Project and the State  
24 Water Project;

25 (3) document in writing any significant facts about real-time conditions relevant to the  
26 determinations of reverse OMR flow rates, including—

27 (A) whether targeted real-time fish monitoring in Old River pursuant to this section,  
28 including monitoring in the vicinity of Station 902, indicates that a significant increase  
29 in the salvage of Delta smelt is imminent; and

30 (B) whether near-term forecasts with available salvage models show under  
31 prevailing conditions that OMR flow of ^5000 cubic feet per second will cause  
32 significantly increased take of Delta smelt;

33 (4) show in writing that any determination to manage OMR reverse flow at rates less  
34 negative than ^5000 cubic feet per second is necessary to avoid a negative impact on the  
35 long-term survival of the Delta smelt, including an explanation of the data examined and the  
36 connection between the data and the choice made, after considering—

37 (A) the findings under paragraph (3);

38 (B) whether continued project operations over the remainder of the water year would  
39 exceed the incidental take level;



(C) the potential effects of entrainment on subsequent smelt abundance, including consideration of the distribution of the population throughout the Delta;

(D) the water temperature;

(E) other factors relevant to the determination; and

(F) whether any alternative measures could have a lesser water supply impact; and

(5) for any subsequent biological opinion, make the showing required under paragraph (4) for any determination to manage OMR reverse flow at rates less negative than the upper limit in the smelt biological opinion.

(f) Memorandum of Understanding.—

(1) IN GENERAL.—Not later than December 1, 2014, the Commissioner and the Director shall enter into a memorandum of understanding to ensure that the smelt biological opinion is implemented in a manner that minimizes water supply losses while complying with applicable laws (including regulations).

(2) CONSULTATION.—If the memorandum of understanding changes any procedures established under the smelt biological opinion, additional consultation shall not be required if—

(A) the changes do not have an adverse effect on listed fish species; and

(B) the implementation of the memorandum of understanding would not be a major change to implementation of the smelt biological opinion.

(3) TAKE STATEMENT.—Any change to the procedures established under the smelt biological opinion that does not create a new adverse effect to a listed fish species shall not alter application of the take exemption in the incidental take statement in the biological opinion under section 7(o)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1536(o)(2)).

## TITLE II—ENSURING SALMONID MANAGEMENT IS RESPONSIVE TO NEW SCIENCE

### SEC. 201. DEFINITION OF SECRETARY.

In this title, the term “Secretary” means the Secretary of Commerce.

### SEC. 202. REQUIRED SCIENTIFIC STUDIES.

(a) Trap and Barge Pilot Project to Increase Survival Through the Delta.—

(1) IN GENERAL.—The Assistant Administrator and the Commissioner, in collaboration with the United States Fish and Wildlife Service, the California Department of Fish and Wildlife, and other interested parties, shall design, permit, implement, and evaluate a pilot program to test the efficacy of an experimental trap and barge program to improve survivals of juvenile salmonids emigrating from the San Joaquin watershed through the Delta.

(2) PLAN.—

(A) IN GENERAL.—Not later than 30 days after the date of enactment of this Act, the

Assistant Administrator shall convene a working group of the relevant agencies and other interested parties to develop and execute a plan for the design, budgeting, implementation, and evaluation of the pilot program described in paragraph (1), using existing expertise on trap and barge programs as may be available.

(B) CONTENTS.—The plan shall describe—

(i) a schedule and budget for the program; and

(ii) the responsible parties for each element of the program.

(3) REVIEW.—The Assistant Administrator shall simultaneously—

(A) provide an opportunity for public review and comment on the pilot program; and

(B) ensure an expeditious independent peer review of the program to improve the rigor and likelihood of success of the program.

(4) PILOT PROGRAM.—After carrying out paragraph (2), the Assistant Administrator shall—

(A) complete the necessary design and evaluations of the pilot program; and

(B) seek such authorizations and permits as may be required for the prompt implementation and evaluation of the pilot program by the Assistant Administrator, the Commissioner, or such other parties as the Assistant Administrator and Commissioner determine appropriate.

(5) DURATION.—Subject to the availability of funding, the Assistant Administrator and the Commissioner shall—

(A) to the maximum extent practicable, commence implementation of the pilot program during calendar year 2015 or as soon thereafter as practicable; and

(B) conduct the pilot program for such period of time as is necessary to evaluate the efficacy of the program to improve survivals across a range of environmental conditions.

(6) ANNUAL REPORTS.—The Assistant Administrator and the Commissioner shall jointly report annually to the Committee on Environment and Public Works of the Senate and the Committee on Natural Resources of the House of Representatives on progress made in carrying out this subsection, including—

(A) estimated survival rates through the Delta for both juvenile salmonids that were barged through the Delta and juvenile salmonids that were not barged; and

(B) if survival rates are significantly higher for barged fish as compared to other outmigrating smolts, recommendations regarding broadening the pilot program and adjusting any relevant recommendations under section 203.

(b) Tagging Studies.—

(1) IN GENERAL.—The Assistant Administrator, in consultation with Delta science partners—

(A) shall carry out tagging studies, including acoustic telemetry and Passive



Integrated Transponder (PIT) tagging studies as appropriate, under which habitat, predators, flow conditions, or other factors are experimentally altered and the behavior and survival of tagged juvenile salmonids are observed; and

(B) may carry out additional studies may to aid in the understanding of Chinook salmon and steelhead abundance, distribution, and survival.

(2) SAMPLING.—Sampling under paragraph (1)(A) shall—

(A) include recording water quality and tidal data;

(B) be designed to aid in the understanding of salmonid abundance, distribution, and movements throughout the Bay Delta, including estimates of Delta survival from Knights Landing or from Mossdale to Chipps Island; and

(C) supplement, not supplant, ongoing acoustic tag and coded wire survival studies in the San Joaquin and Sacramento Rivers that the Assistant Administrator determines are crucial for trend monitoring.

## SEC. 203. PROCESS FOR ENSURING SALMONID MANAGEMENT IS RESPONSIVE TO NEW SCIENCE.

(a) In General.—The Commissioner and the Assistant Administrator shall implement, in accordance with this section, the reasonable and prudent alternative described in the salmonid biological opinion—

(1) to allow for and anticipate adjustments in operating criteria to reflect the best scientific and commercial data currently available; and

(2) to test and evaluate improvements in operations that will meet applicable regulatory requirements and enable improvements in water supply reliability.

(b) Annual Reviews of Certain Operating Criteria.—

(1) IN GENERAL.—Not later than December 31, 2015, and at least annually thereafter, subject to paragraph (4), the Commissioner, in consultation with and with the assistance of the Assistant Administrator, shall examine and identify—

(A) adjustments to the initiation of Action IV.2.3 of the salmonid biological opinion relating to negative OMR flows; and

(B) adjustments in the timing, triggers, or other operational details relating to the implementation of pumping restrictions under Action IV.2.1 of the salmonid biological opinion relating to the inflow to export requirements

(2) RECOMMENDATIONS.—Pursuant to the consultation and assessments carried out under paragraph (1), the Commissioner shall make recommendations to the Assistant Administrator on adjustments that, in the exercise of the adaptive management provisions of the salmonid biological opinion, can improve water supplies and are consistent with subsection (a) and other requirements of applicable law.

(3) IMPLEMENTATION.—The Commissioner shall implement adjustments described in paragraph (2) for which the conditions of subsection (c) are met.

(4) SUCCESSOR BIOLOGICAL OPINION.—The Assistant Administrator and the

Commissioner shall review and identify adjustments to water supply restrictions in any successor biological opinion to the salmon biological opinion to apply the requirements of this section to those water supply restrictions in cases in which there are references to Actions IV.2.1 and IV.2.3 of the salmonid biological opinion.

(c) Adjustments.—On receiving the recommendations under subsection (b), the Assistant Administrator shall—

(1) evaluate the effects of the recommended adjustments on listed salmonid species; and

(2) recommend to the Commissioner adjustments for which—

(A) the net effect on listed salmonid species is equivalent to the net effect using the underlying criteria, taking into account whatever actions or measures may be implemented in conjunction with the adjustments to mitigate the effects of the adjustments; and

(B) the effects of the adjustments fall within the incidental take authorizations.

(d) Offsetting Species Survival Benefits From Other Measures.—

(1) IN GENERAL.—When examining opportunities to offset the potential adverse effect of adjustments under subsection (b) to operating criteria under this section, the Commissioner and the Assistant Administrator shall take into account the potential salmonid survival improvements that are likely to result from other measures that, if implemented in conjunction with the adjustments, would offset the adverse effects of the adjustments.

(2) ADMINISTRATION.—When considering offsetting measures, the Commissioner and the Assistant Administrator shall—

(A) consider the type, timing and nature of the adverse effects to specific species; and

(B) ensure that the measures provide equivalent overall benefits to the listed salmonid species in the aggregate, as long as the change in survival rates for each species remains consistent with the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) (including regulations).

(3) WATER DISTRICTS.—The offsetting measures may include actions implemented with the support of a substantial contribution from water districts that would benefit from the adjustments.

(e) Framework for Examining Opportunities to Minimize or Offset the Potential Adverse Effect of Adjustments to Operating Criteria.—Not later than December 31, 2015, and every 5 years thereafter, the Assistant Administrator, in consultation with the Director of the California Department of Fish and Wildlife, based on the best scientific and commercial data available and for each listed salmonid species, issue estimates of the increase in through-Delta survival the Secretary expects to be achieved—

(1) with export restrictions as specified by Reasonable and Prudent Action IV.2.3 of the salmonid biological opinion as compared to limiting OMR flow to a fixed rate of ^5000 cubic feet per second within the time period Action IV.2.3 of the salmonid biological opinion is applicable, based on a given rate of San Joaquin River inflow to the Delta and holding other relevant factors constant;

(2) with San Joaquin River inflow to export restrictions specified within Reasonable and Prudent Action IV.2.1 of the salmonid biological opinion as compared to in the export restrictions in the April and May period imposed by the State Water Resources Control Board decision D-1641, based on a given rate of San Joaquin River inflow to the Delta and holding other relevant factors constant;

(3) by a trap-and-barge program based on the experience of other systems to the extent the systems are comparable, and the study described in section 202, as that information becomes available;

(4) through physical habitat restoration improvements;

(5) through predation control programs;

(6) through temporary barriers, the Cross Channel Gates, and other projects affecting flow in the Delta;

(7) by salvaging fish that may be entrained near the entrance to Clifton Court Forebay; and

(8) by any other management measures that may provide equivalent or better benefits for listed salmonid species with improvements to water supplies.

(f) Survival Estimates to Be Quantitative to the Maximum Extent Feasible.—

(1) IN GENERAL.—To the maximum extent feasible, the Assistant Administrator shall make the survival estimates and determinations described in subsection (e) quantitatively, such as a range of percentage increases in through-Delta survival that could result from the management measures.

(2) QUALITATIVE SURVIVAL ESTIMATES.—If the Assistant Administrator cannot provide a quantitative survival estimate for the species resulting from a particular management measure, the Assistant Administrator shall provide qualitative survival estimates that are based on the best available science.

(3) RANKING.—If the Assistant Administrator provides qualitative survival estimates for the species resulting from 1 or more management measures, the Secretary shall, to the maximum extent feasible, rank the management measures described in subsection (e) in terms of the most likely expected contribution to increased through-Delta survival relative to the other measures.

(4) COMPARISON OF BENEFITS.—If at the time the Assistant Administrator conducts the analysis under subsection (b), the Secretary has not issued the estimates of increased through-Delta survival benefits from different management measures pursuant to subsection (e), the Secretary shall compare the benefits to the species from different management measures based on the best scientific and commercial data available at the time.

(g) Comparison of Adverse Consequences for Alternative Management Measures of Equal Benefit to the Salmon.—

(1) DEFINITIONS.—In this subsection:

(A) EQUIVALENT ALTERNATIVE MEASURE.—The term “equivalent alternative measure” means an alternative management measure or combination of alternative

management measures described in paragraph (2).

(B) EQUIVALENT EXISTING MEASURE.—The term “equivalent existing measure” means 1 or more existing measures described in subparagraph (A), (B), (C), or (D) of paragraph (2).

(C) EQUIVALENT INCREASE IN THROUGH-DELTA SURVIVAL RATES FOR LISTED SALMONID SPECIES.—The term “equivalent increase in through-Delta survival rates for listed salmonid species” means an increase in through-Delta survival rates that is equivalent when considering the change in through-Delta survival rates for the listed salmonid species in the aggregate, and not necessarily the same change for each individual species, as long as the change in survival rates for each species remains consistent with the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) (including implementing regulations).

(2) ALTERNATIVE MANAGEMENT MEASURES.—As part of the reviews of operating criteria pursuant to subsection (b), the Assistant Administrator shall determine whether any alternative management measures or combination of alternative management measures described in paragraphs (3) through (8) of subsection (e) would provide an increase in through-Delta survival rates for listed salmonid species that is equivalent to the increase in through-Delta survival rates for listed salmonid species from the following:

(A) With export restrictions as specified by Action IV.2.3 of the salmonid biological opinion, as compared to limiting OMR flow to a fixed rate of ^5000 cubic feet per second within the time period in Action IV.2.3 of the salmonid biological opinion as applicable.

(B) With export restrictions as specified by Action IV.2.3 of the salmonid biological opinion, as compared to a modification of Action IV.2.3 of the salmonid biological opinion that would provide additional water supplies, other than that described in subparagraph (A).

(C) With San Joaquin River inflow to export restrictions specified within Action IV.2.1 of the salmonid biological opinion, as compared to the export restrictions in the April/May period imposed by the State Water Resources Control Board decision D-1641.

(D) With San Joaquin River inflow to export restrictions specified within Action IV.2.1 of the salmonid biological opinion, as compared to a modification of Action IV.2.1 that would provide additional water supplies, other than that described in subparagraph (C).

(3) EQUIVALENT ALTERNATIVE MEASURES.—If the Assistant Administrator identifies an equivalent alternative measure pursuant to paragraph (2), the Assistant Administrator shall determine whether—

(A) it is technically feasible and within Federal jurisdiction to implement the equivalent alternative measure; and

(B) the adverse consequences of doing so are less than the adverse consequences of the equivalent existing measure, including a concise evaluation of the adverse consequences to other affected interests.

(4) OPERATING CRITERIA.—If the Assistant Administrator makes the findings in subparagraphs (A) and (B) of paragraph (3), the Assistant Administrator and the Commissioner shall adjust the operating criteria in the salmonid biological opinion pursuant to this subsection to implement the equivalent alternative measure in place of the equivalent existing measure in order to increase water supplies to the maximum extent practicable while maintaining a net combined effect of equivalent through-Delta survival rates for the listed salmonid species.

(h) Tracking Adverse Effects Beyond the Range of Effects Accounted for in the Salmonid Biological Opinion and Coordinated Operation With Smelt Biological Opinion.—

(1) IN GENERAL.—Among the adjustments to the operational criteria considered through the adaptive management process under this section, the Assistant Administrator and the Commissioner shall—

(A) evaluate the effect on listed salmonid species and water supply of the potential adjustment to operational criteria described in subparagraph (B); and

(B) consider requiring that before all or part of the provisions of Action IV.2.1 or IV.2.3 of the salmonid biological opinion are imposed in any specific instance, the Assistant Administrator show that the implementation of those provisions in that specific instance is necessary to avoid additional adverse effects on listed salmonid species beyond the range of effects analyzed and accounted for in the salmonid biological opinion.

(2) OPERATIONAL CRITERIA.—The Assistant Administrator, the Director, and the Commissioner, in coordination with State officials as appropriate, shall establish operational criteria to coordinate management of OMR flows under the smelt biological opinion and the salmonid biological opinion, to take advantage of opportunities to provide additional water supplies from the coordinated implementation of the smelt biological opinion and the salmonid biological opinion.

(i) Real-time Monitoring and Management.—

(1) IN GENERAL.—The Assistant Administrator and the Commissioner shall, through the adaptive management provisions of the National Marine Fisheries Service of the salmonid biological opinion, analyze whether date-certain triggers that limit OMR reverse flow to ^5000 cubic feet per second could be adjusted to instead use real-time migration information on salmonids.

(2) IMPLEMENTATION.—If the analysis shows that the use of real-time information to trigger OMR flow limitations would improve water supply without causing significant adverse effects to Winter-run Chinook salmon, the real-time management triggers shall be implemented.

## SEC. 204. PILOT PROGRAM TO PROTECT NATIVE ANADROMOUS FISH IN STANISLAUS RIVER.

(a) Definitions.—In this section:

(1) DISTRICTS.—The term “districts” means—

(A) the Oakdale Irrigation District; and

(B) the South San Joaquin Irrigation District.

(2) PILOT PROGRAM.—The term “pilot program” means the nonnative predator removal pilot program established under this section.

(b) Establishment.—The Assistant Administrator, in consultation with the Director and the head of the California Department of Fish and Wildlife, shall, subject to the availability of funding, develop and conduct a pilot nonnative predator fish removal program to remove from the areas in and around the Delta, including the Stanislaus River—

(1) nonnative striped bass;

(2) nonnative smallmouth bass;

(3) nonnative largemouth bass;

(4) nonnative black bass; and

(5) other nonnative predator fish.

(c) Requirements.—The pilot program shall—

(1) be scientifically based;

(2) include methods to quantify, by, among other methods, evaluating the number of juvenile anadromous fish that migrate past the rotary screw trap located at Caswell—

(A) the number and size of predator fish removed each year from the program area;

(B) the impact of the removal on the overall abundance of predator fish in the program area; and

(C) the impact of the removal on the populations of juvenile anadromous fish found in the Stanislaus River and elsewhere;

(3) among other methods, use wire fyke trapping, portable resistance board weirs, and boat electrofishing, which are among the most effective predator collection techniques that minimize effects to native anadromous fish;

(4) be developed by not later than 180 days after the date of enactment of this Act, including the application for all necessary scientific research and species enhancement permits under section 10(a)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)) for the performance of the pilot program;

(5) be implemented on the first business day of the calendar year following the date of issuance of all necessary scientific research and species enhancement permits and funding needed to commence the pilot program; and

(6) be implemented for a period of 7 consecutive calendar years.

(d) Management.—

(1) IN GENERAL.—The Assistant Administrator may and is encouraged to enter into agreements with interested local water districts to jointly develop, implement and evaluate the pilot program.



(2) ADMINISTRATION.—Parties to an agreement under paragraph (1) are encouraged—

(A) to work collaboratively to ensure the performance of the pilot program; and

(B) to discuss and agree on, among other elements, changes in the structure, management, personnel, techniques, strategy, data collection, reporting, and conduct of the pilot program.

(e) Implementation.—

(1) IN GENERAL.—On agreement between the Assistant Administrator and any participating districts, the pilot program may be carried out by—

(A) personnel employed by the districts;

(B) qualified private contractors hired by the districts;

(C) personnel employed by, on loan to, or otherwise assigned to the National Marine Fisheries Service; or

(D) any combination of individuals and entities described in subparagraphs (A) through (C).

(2) PARTICIPATION BY THE NATIONAL MARINE FISHERIES SERVICE.—

(A) IN GENERAL.—If the districts elect pursuant to paragraph (1) to conduct the pilot program using the personnel employed, or qualified private contractors hired, by the districts, the Commissioner may assign an individual described in paragraph (1)(C) to be present for any field activity carried out under the pilot program to ensure compliance with subsection (c).

(B) COSTS.—Subject to subsection (f), the districts shall pay 100 percent of the cost of participation by any individual under subparagraph (A).

(3) TIMING OF ELECTION.—The districts shall—

(A) make an election under paragraph (1) with respect to the following calendar year for each calendar year during which the pilot program is conducted; and

(B) notify the Assistant Administrator of that election by not later than October 15 of the calendar year during which the election is made.

(f) Funding.—

(1) ANNUAL FUNDING.—

(A) IN GENERAL.—The Commissioner, the Assistant Administrator, and the participating districts shall develop a budget and funding plan for the pilot project that will allocate costs appropriately among the participating entities.

(B) NOTIFICATION BY COMMISSIONER.—Not later than December 1 of each calendar year during which the pilot program is conducted, the Commissioner shall submit to the districts an estimate of the cost to be incurred by the Bureau of Reclamation under the pilot program during the following calendar year, if any, including the cost of any data collection and publication under subsection (g).

(C) FAILURE TO PAY.—If an amount equal to the amount described in an estimate

under subparagraph (B) is not provided to the Assistant Administrator by the districts by not later than December 31 of the applicable calendar year—

(i) the Assistant Administrator shall have no obligation to conduct any activity under the pilot program that is otherwise scheduled to be carried out by the Assistant Administrator; and

(ii) the districts shall be prohibited from conducting any activity under the pilot program until the date on which full payment is made by the districts.

(2) ACCOUNTING.—

(A) IN GENERAL.—Not later than September 1 of each calendar year during which the pilot program is conducted, the Assistant Administrator shall provide to the participating entities an accounting of the expenses of the Assistant Administrator under the pilot program during the preceding calendar year.

(B) ESTIMATE DISCREPANCIES.—

(i) SHORTFALL.—If the estimated amount paid by the districts under paragraph (1) for a calendar year was less than the actual costs incurred by the Assistant Administrator—

(I) the districts shall pay to the Assistant Administrator an amount equal to the difference by not later than September 30 of that calendar year; and

(II) the Assistant Administrator shall not be required to carry out any activity otherwise scheduled under the pilot program.

(ii) EXCESS.—If the estimated amount paid by the districts under paragraph (1) for a calendar year was greater than the actual costs incurred by the Assistant Administrator, a credit shall be provided to the districts, which shall be deducted from the estimated payment required to be paid by the districts for the following calendar year.

(g) Data Reporting and Evaluation.—

(1) IN GENERAL.—Not later than the 15th day of each month during which the pilot program is conducted, the Assistant Administrator shall publish on the website of the National Marine Fisheries Service a tabular summary of the raw data collected under the pilot program during the preceding month.

(2) REPORT.—Not later than June 30 of the calendar year following completion of the pilot program, the Assistant Administrator and the districts shall jointly submit a report for peer review that—

(A) discusses the findings and conclusions of the pilot program;

(B) synthesizes the data described in paragraph (1); and

(C) makes recommendations for additional studies and activities.

(h) Permit Process.—

(1) IN GENERAL.—Not later than 1 year after the date of filing of an application by the Assistant Administrator and the districts, the Secretary of the Interior, the Secretary of



Commerce, or both, as applicable, shall issue all necessary scientific research and species enhancement permits under section 10(a)(1) of the Endangered Species Act (16 U.S.C. 1539(a)(1)) for the performance of the pilot program.

(2) NAMED PARTIES.—Each permit under paragraph (1) shall be issued in the name of the Assistant Administrator and the participating districts.

(3) PRIVATE CONTRACTORS.—The districts may delegate the authority under this subsection to any qualified private contractor retained in accordance with subsection (e)(1)(B).

(i) Emergency Environmental Reviews.—To expedite the environmentally beneficial pilot program established under this section for the conservation of threatened and endangered species, the Secretary of the Interior shall consult with the Director of the Council on Environmental Quality in accordance with section 1506.11 of title 40, Code of Federal Regulations (or a successor regulation), to develop alternative arrangements to achieve compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) for purposes of this section.

(j) Sunset.—The authorities provided by this section shall expire on the date that is 7 years after the date of commencement of the pilot program.

## SEC. 205. CALFED INVASIVE SPECIES PILOT PROJECTS IN THE SACRAMENTO-SAN JOAQUIN BAY DELTA AND ITS TRIBUTARIES.

(a) Findings.—Congress finds the following:

(1) The Sacramento-San Joaquin Bay Delta and its tributaries—

(A) is 1 of the largest and most diverse estuaries in the United States;

(B) is a natural treasure and a vital link in the water system of California;

(C) has native biodiversity important to the ecological and economic systems of California, including water deliveries to agriculture, municipalities, and the environment and fisheries industries; and

(D) has river tributaries important for rearing of salmon and steelhead smolts, which experience a high level of predation from nonnative species.

(2) Past, present, and future introductions of invasive species are and will be a major factor in the decline of native pelagic and anadromous endangered or threatened species in the Sacramento-San Joaquin Bay Delta and its tributaries.

(3) More than 250 nonnative aquatic and plant species have been introduced into the Delta and its tributaries, of which at least 185 species have become established and have altered the ecosystem of the Sacramento-San Joaquin Bay Delta watershed.

(4) The Bay Delta Conservation Plan, the Recovery Plan for the Evolutionary Significant Units of Sacramento River Winter-run Chinook Salmon and Central Valley Spring-run Chinook Salmon and the Distinct Population Segment of the Central Valley Steelhead, the Recovery Plan for the Sacramento-San Joaquin Delta Native Fishes, and the multiple 5-year

1 reviews of those plans all highlight that introduced nonnative invasive species are a  
2 significant factor in the decline of native fish species.

3 (5) Those nonnative species, which include invasive aquatic vegetation, predators, and  
4 competitors, directly or indirectly cause biological stress for pelagic and anadromous  
5 endangered or threatened fish species in the Sacramento-San Joaquin Bay Delta and its  
6 tributaries.

7 (6) If threats by nonnative species to native fish species are not addressed, there is a high  
8 probability that native species of the pelagic and anadromous community of the  
9 Sacramento-San Joaquin Bay Delta watershed will go extinct.

10 (7) The Calfed Bay-Delta Authorization Act (title I of Public Law 108–361; 118 Stat.  
11 1681) authorized a program to prevent, control, and eradicate invasive species, but as of the  
12 date of enactment of this Act, the program has not been implemented.

13 (8) A focused pilot program needs to be conducted within the Delta and river tributaries  
14 to reduce threats to native listed pelagic and anadromous species by nonnative species.

15 (9) Reducing nonnative stressors on native listed pelagic and anadromous species will  
16 contribute to both native listed pelagic and anadromous species recovery and lowering the  
17 impact on downstream water users as those native listed pelagic and anadromous species  
18 recover.

19 (b) Pilot Projects to Implement Calfed Invasive Species Program.—

20 (1) IN GENERAL.—Not later than January 1, 2016, the Secretary of the Interior, in  
21 collaboration with the Secretary of Commerce and the Director of the California  
22 Department of Fish and Wildlife, shall begin pilot projects to implement the invasive  
23 species program, including prevention, control, and eradication activities, as authorized  
24 under section 103(d)(6)(A)(iv) of the Calfed Bay-Delta Authorization Act (118 Stat. 1690;  
25 Public Law 108–361).

26 (2) REQUIREMENTS.—The pilot projects shall—

27 (A) seek to reduce invasive aquatic vegetation, predators, and other competitors that  
28 are major factors in the decline of native listed pelagic and anadromous species that  
29 occupy the Sacramento and San Joaquin Rivers and their tributaries and the  
30 Sacramento-San Joaquin Bay-Delta; and

31 (B) address how to remove, reduce, or control the effects of species including  
32 Asiatic clams, silversides, gobies, Brazilian water weed, largemouth bass, smallmouth  
33 bass, striped bass, crappie, bluegill, white and channel catfish, and brown bullheads.

34 (3) PHASES.—The activities of the Secretary of the Interior under this subsection shall  
35 consist of the following phases:

36 (A) PHASE 1.—The Secretary of the Interior shall convene a panel of experts,  
37 including experts recommended by the State—

38 (i) to identify the nonnative species having the greatest impact on the viability  
39 of native pelagic and anadromous native listed species;

40 (ii) to identify the nonnative species for which actions to reduce or control the

population is determined to be possible; and

(iii) to design a study to reduce the nonnative species identified in clauses (i) and (ii) and prepare a cost estimate to implement this study.

(B) PHASE 2.—The Secretary of the Interior shall test the general viability of nonnative reduction methods, including either direct predator removal or alteration of channel conditions, or a combination of those methods, through pilot projects at multiple sites in addition to the projects on the Stanislaus River pursuant to section 204, including known hotspots of predator aggregation or activity, such as—

(i) Clifton Court Forebay;

(ii) Central Valley Project intakes;

(iii) Head of Old River;

(iv) Georgiana Slough;

(v) Old and Middle Rivers;

(vi) Franks Tract;

(vii) Paintersville Bridge;

(viii) individual river tributaries important for wild populations of anadromous species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(ix) human-made submerged structures; and

(x) salvage release sites.

(C) PHASE 3.—If feasible, the Secretary of the Interior shall implement nonnative reduction methods at a larger number of sites, incorporating information learned during the first and second phases.

(4) DATA COLLECTION.—The Secretary of the Interior shall collect data associated with the implementation of the projects described in this subsection, and shall specifically collect data on the impact on—

(A) pelagic and anadromous species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(B) water quality; and

(C) water supply.

(5) REVISIONS.—After assessing the data collected as described in paragraph (4), the Secretary of the Interior, in collaboration with the Secretary of Commerce and the Director of the California Department of Fish and Wildlife, shall, if appropriate, annually recommend revisions to the reasonable and prudent alternative contained in the salmonid biological opinion and the smelt biological opinion, or other administrative Federal requirements governing the operation of the Central Valley Project and the State Water Project, that are likely to produce additional fishery, water quality, and water supply benefits.

(c) Implementation.—The Secretary of the Interior shall implement the Calfed program described in subsection (b) for at least a period of 7 consecutive years beginning on the date of implementation.

(d) Reporting Requirements.—The Secretary of the Interior shall provide to the Committee on Environment and Public Works of the Senate and the Committee on Natural Resources of the House of Representatives—

(1) not later than January 1, 2016, a report containing a description of the projects described in subsection (b), including the application for all necessary scientific research and species enhancement permits under section 10(a)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)), and for the performance of the Calfed invasive species program;

(2) on the completion of Phase 1 as described in subsection (b)(3)(A), a report describing the implementation and cost effectiveness of that phase;

(3) not later than 2 years after the project under this subsection begins, a report describing—

(A) the progress of the eradication of the nonnative species in the Delta and its tributaries;

(B) how those efforts have helped the Recovery Plans for endangered and threatened anadromous and pelagic species in the Delta watershed; and

(C) the associated cost effectiveness of each control measure; and

(4) after the pilot projects are complete, a report describing the results of the program, including recommendations on whether the program should be continued, how the program may be taken to full scale in the most cost-effective manner, and how a mitigation program for the Central Valley Project allowable under section 10(a)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)) could be implemented.

(e) Emergency Environmental Reviews.—To expedite the environmentally beneficial program for the conservation of threatened and endangered species carried out under this section, the Secretary of the Interior shall consult with the Council on Environmental Quality in accordance with section 1506.11 of title 40, Code of Federal Regulations (including successor regulations) to develop alternative arrangements for the program to comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

## SEC. 206. MARK FISHERY AND HARVEST MANAGEMENT.

(a) In General.—To minimize the impact of harvest and project operations on salmonids, contribute to recovery of stocks of endangered or threatened species, improve management of fish stocks of both hatchery and natural origins, and to minimize risk of a natural origin fall Chinook listing under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), not later than 60 days after the date of enactment of this Act, the Assistant Administrator, in partnership with the Director of the California Department of Fish and Wildlife and persons responsible for funding Central Valley hatcheries, shall convene an independent science panel to follow up on the 2012 recommendations of the California Hatchery Scientific Review Group by providing an

assessment of costs and benefits associated with marking, with tagging, and with a program that combines marking and tagging Central Valley hatchery produced fall Chinook.

(b) Administration.—The Assistant Administrator shall ensure that the independent science panel—

(1) includes an appropriate number of scientific experts as determined and appointed by the Assistant Administrator, and an equal number of scientific experts selected by entities responsible for funding California salmon mitigation hatcheries;

(2) considers and gives equal weight to both inland and ocean monitoring and management needs, including harvest; and

(3) completes the review by December 31, 2015.

(c) Implementation.—Not later than October 1, 2018, the Assistant Administrator shall assess and implement harvest management strategies to provide better protection for sensitive Chinook stocks while still allowing for harvest of hatchery fall Chinook.

## SEC. 207. NEW ACTIONS TO BENEFIT CENTRAL VALLEY SALMONIDS.

Not later than March 1, 2016, under similar terms and conditions as successful United States Fish and Wildlife Service programs on Clear Creek and Battle Creek, the Director, in collaboration with the Director of the California Department of Fish and Wildlife, the Commissioner of the Bureau of Reclamation, or both, shall issue necessary permits and otherwise facilitate the deployment of temporary in-river structures—

(1) to protect and grow natural origin spring Chinook populations by blocking access to hatchery origin fall Chinook; and

(2) to prevent hatchery origin Chinook salmon and steelhead from reaching spawning grounds where the species will compete for spawning with natural origin fish listed under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

## TITLE III—OPERATIONAL FLEXIBILITY AND DROUGHT RELIEF

### SEC. 301. FINDINGS.

Based on the congressional findings in section 2, Congress finds that it is appropriate and necessary for Federal agencies to exercise the maximum amount of flexibility provided to the agencies under applicable laws (including regulations) to maximize delivery of water supplies while providing the same or better levels of protection for species as in effect on the date of enactment of this Act.

### SEC. 302. DEFINITIONS.

In this title:

(1) CENTRAL VALLEY PROJECT.—The term “Central Valley Project” has the meaning given the term in section 3403 of the Central Valley Project Improvement Act (Public Law

102–575; 106 Stat. 4707).

(2) KLAMATH PROJECT.—The term “Klamath Project” means the Bureau of Reclamation project in the States of California and Oregon, as authorized under the Act of June 17, 1902 (32 Stat. 388, chapter 1093).

(3) RECLAMATION PROJECT.—The term “Reclamation Project” means a project constructed pursuant to the authorities of the reclamation laws and whose facilities are wholly or partially located in the State.

(4) SECRETARIES.—The term “Secretaries” means—

(A) the Administrator of the Environmental Protection Agency;

(B) the Secretary of Agriculture;

(C) the Secretary of Commerce; and

(D) the Secretary of the Interior.

## SEC. 303. OPERATIONAL FLEXIBILITY IN TIMES OF DROUGHT.

(a) Water Supplies.—

(1) IN GENERAL.—In response to a declaration of a state of drought emergency by the Governor of California and for the period of time such a drought declaration remains in effect, the Secretaries shall provide the maximum quantity of water supplies practicable to Central Valley Project agricultural, municipal and industrial, and refuge service and repayment contractors, State Water Project contractors, and any other Indian tribe, locality, or municipality in the State, by approving, consistent with applicable laws (including regulations), projects and operations to provide additional water supplies as quickly as practicable based on available information to address the emergency conditions.

(2) APPLICATION.—Paragraph (1) applies to projects or operations involving the Klamath Project if the projects or operations would benefit Federal water contractors in the State.

(b) Administration.—In carrying out subsection (a), the Secretaries shall, consistent with applicable laws (including regulations)—

(1) issue all necessary permit decisions under the authority of the Secretaries not later than 30 days after the date on which the Secretaries receive a completed application from the State to place and use temporary barriers or operable gates in Delta channels to improve water quantity and quality for the State Water Project and the Central Valley Project south of Delta water contractors and other water users, on the condition that the barriers or operable gates—

(A) provide benefits for species protection and in-Delta water user water quality; and

(B) are designed so that formal consultations under section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) are not necessary;

(2) require the Director of the United States Fish and Wildlife Service and the Commissioner of Reclamation—



(A) to complete, not later than 30 days after the date on which the Director or the Commissioner receives a complete written request for water transfer associated with voluntarily fallowing nonpermanent crops in the State, all requirements under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) necessary to make final permit decisions on the request; and

(B) to grant any water transfer request described in subparagraph (A) to maximize the quantity of water supplies available for nonhabitat uses, on the condition that the fallowing and associated water transfer are in compliance with applicable Federal laws (including regulations);

(3) adopt a 1:1 inflow to export ratio for the increment of increased flow of the San Joaquin River, as measured as a 3-day running average at Vernalis during the period beginning on April 1, and ending on May 31, resulting from voluntary transfers and exchanges of water supplies, on the condition that a proposed transfer or exchange under this paragraph may only proceed if the Secretary of the Interior determines that—

(A) the environmental effects of the proposed transfer or exchange are consistent with effects permissible under applicable law (including regulations); and

(B) Delta conditions are suitable to allow movement of the transfer water through the Delta consistent with the permitted rights of the Commissioner of Reclamation; and

(4) provide additional priority for eligible WaterSMART projects that address drought conditions, including projects that—

(A) provide emergency drinking and municipal water supplies to localities in a quantity necessary to meet minimum public health and safety needs;

(B) prevent the loss of permanent crops;

(C) minimize economic losses resulting from drought conditions; or

(D) provide innovative water conservation tools and technology for agriculture and urban water use that can have immediate water supply benefits.

(c) Accelerated Project Decision and Elevation.—

(1) IN GENERAL.—On request by the Governor of the State, the heads of Federal agencies shall use the expedited procedures under this subsection to make final decisions relating to a Federal project or operation if the purpose of the project or operation is to provide relief for emergency drought conditions pursuant to subsections (a) and (b).

(2) REQUEST FOR RESOLUTION.—

(A) IN GENERAL.—On request by the Governor of the State, the head of a Federal agency referenced in paragraph (1), or the head of another Federal agency responsible for carrying out a review of a project, as applicable, the Secretary of the Interior shall convene a final project decision meeting with the heads of all relevant Federal agencies to decide whether to approve a project to provide relief for emergency drought conditions.

(B) MEETING.—The Secretary of the Interior shall convene a meeting requested

under subparagraph (A) not later than 7 days after the date on which the meeting request is received.

(3) NOTIFICATION.—On receipt of a request for a meeting under paragraph (2), the Secretary of the Interior shall notify the heads of all relevant Federal agencies of the request, including information on the project to be reviewed and the date of the meeting.

(4) DECISION.—Not later than 10 days after the date on which a meeting is requested under paragraph (2) and subject to subsection (e)(2), the head of the relevant Federal agency shall issue a final decision on the project.

(5) MEETING CONVENED BY SECRETARY.—The Secretary of the Interior may convene a final project decision meeting under this subsection at any time, at the discretion of the Secretary, regardless of whether a meeting is requested under paragraph (2).

(d) Application.—To the extent that a Federal agency, other than the agencies headed by the Secretaries, has a role in approving projects described in subsections (a) and (b), this section shall apply to those Federal agencies.

(e) Limitation.—Nothing in this section authorizes the heads of applicable Federal agencies to approve projects—

(1) that would otherwise require congressional authorization; or

(2) without following procedures required by applicable law.

(f) 2015 Drought Plan.—The Secretary of Commerce and the Secretary of the Interior, in consultation with appropriate State officials, shall develop a drought operations plan for calendar year 2015 that is consistent with this section and other provisions of this Act intended to provide additional water supplies that could be of assistance during the drought in effect as of the date of enactment of this Act.

## SEC. 304. OPERATION OF CROSS-CHANNEL GATES.

(a) In General.—The Secretary of Commerce and the Secretary of the Interior shall jointly—

(1) authorize and implement activities to ensure that the Delta Cross Channel Gates remain open to the maximum extent practicable using findings from the United States Geological Survey on diurnal behavior of juvenile salmonids, timed to maximize the peak flood tide period and provide water supply and water quality benefits for the duration of the drought emergency declaration of the State, consistent with operational criteria and monitoring criteria developed pursuant to the Order Approving a Temporary Urgency Change in License and Permit Terms in Response to Drought Conditions of the California State Water Resources Control Board, effective January 31, 2014 (or a successor order) and other authorizations associated with that order;

(2) with respect to the operation of the Delta Cross Channel Gates described in paragraph (1), collect data on the impact of that operation on—

(A) species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(B) water quality; and



(C) water supply;

(3) consistent with knowledge gained from activities carried out during 2014, collaborate with the California Department of Water Resources to install a deflection barrier at Georgiana Slough in coordination with Delta Cross Channel Gate diurnal operations to protect migrating salmonids;

(4) evaluate the combined salmonid survival in light of activities carried out pursuant to paragraphs (1) through (3) in deciding how to operate the Delta Cross Channel gates to enhance salmonid survival and water supply benefits; and

(5) not later than May 15, 2015, submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives a written report on the extent to which the gates are able to remain open.

(b) Recommendations.—

(1) IN GENERAL.—After assessing the information collected under subsection (a), the Secretary of the Interior shall recommend revisions to the operation of the Delta Cross-Channel Gates, to the Central Valley Project, and to the State Water Project, including, if appropriate, any reasonable and prudent alternative contained in the salmonid biological opinion that is likely to produce fishery, water quality, and water supply benefits.

(2) COORDINATION.—The Secretary of the Interior shall coordinate with the State Water Resources Control Board to seek consistent direction for the operation of the Delta Cross-Channel Gates under Federal and State law, including Water Right Decision 1641.

## SEC. 305. FLEXIBILITY FOR EXPORT/INFLOW RATIO.

In response to the declaration of a state of drought emergency by the Governor of the State and for the period of time such a drought declaration remains in effect, the Commissioner of the Bureau of Reclamation shall continue to vary the averaging period of the Delta Export/Inflow ratio pursuant to the California State Water Resources Control Board decision D1641, approved in the March 2014 Temporary Urgency Change Order—

(1) to operate to a 35 percent Export/Inflow ratio with a 3 day averaging period on the rising limb of a Delta inflow hydrograph; and

(2) to operate to a 14 day averaging period on the falling limb of the Delta inflow hydrograph.

## SEC. 306. EMERGENCY ENVIRONMENTAL REVIEWS.

To minimize the time spent carrying out environmental reviews and to deliver water quickly that is needed to address emergency drought conditions in the State during the duration of an emergency drought declaration, the head of each applicable Federal agency shall, in carrying out this Act, consult with the Council on Environmental Quality in accordance with section 1506.11 of title 40, Code of Federal Regulations (including successor regulations), to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) during the emergency.

## SEC. 307. PRIORITIZING STATE REVOLVING FUNDS

## DURING DROUGHTS.

(a) In General.—This section shall apply for each of the fiscal years during which an emergency drought declaration of the State is in effect.

(b) Action by Administrator.—The Administrator of the Environmental Protection Agency, in implementing the processes and programs under the State water pollution control revolving funds established under title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) and the State drinking water treatment revolving loan funds established under section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12), shall, for those projects that are eligible to receive assistance under section 603 of the Federal Water Pollution Control Act (33 U.S.C. 1383) or section 1452(a)(2) of the Safe Drinking Water Act (42 U.S.C. 300j–12(a)(2))—

(1) issue a determination of waivers within 30 days of the conclusion of the informal public comment period pursuant to section 436(c) of title IV of division G of Public Law 113–76; and

(2) authorize, at the request of the State, 40-year financing for assistance under section 603(d)(2) of the Federal Water Pollution Control Act (33 U.S.C. 1383(d)(2)) or section 1452(f)(2) of the Safe Drinking Water Act (42 U.S.C. 300j–12(f)(2)).

(c) Effect of Section.—Nothing in this section authorizes the Administrator of the Environmental Protection Agency to modify any funding allocation, funding criteria, or other requirement relating to State water pollution control revolving funds established under title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) and the State drinking water treatment revolving loan funds established under section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12) for any other State.

## SEC. 308. INCREASED FLEXIBILITY FOR REGULAR PROJECT OPERATIONS.

The Secretaries shall, consistent with applicable laws (including regulations)—

(1) to the maximum extent practicable, based on the availability of water and without causing land subsidence or violating water quality standards—

(A) help meet the contract water supply needs of Central Valley Project refuges through the improvement or installation of water conservation measures, water conveyance facilities, and wells to use groundwater resources, on the condition that those activities may only be accomplished by using funding made available under the Water Assistance Program or the WaterSMART program of the Department of the Interior; and

(B) make available to Central Valley Project contractors a quantity of Central Valley Project surface water obtained from the activities carried out under subparagraph (A);

(2) contingent on funding, in coordination with the Secretary of Agriculture, enter into an agreement with the National Academy of Sciences to conduct a comprehensive study, to be completed not later than 1 year after the date of enactment of this Act, on the effectiveness and environmental impacts of saltcedar biological control efforts on increasing water supplies and improving riparian habitats of the Colorado River and its principal tributaries,

1 in the State and elsewhere;

2 (3) in coordination with the California Department of Water Resources and the California  
3 Department of Fish and Wildlife, implement offsite upstream projects in the Delta and  
4 upstream Sacramento River and San Joaquin basins that offset the effects on species listed  
5 as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et  
6 seq.) due to activities carried out pursuant this Act, as determined by the Secretaries;

7 (4) manage reverse flow in the Old and Middle Rivers, as prescribed by the smelt  
8 biological opinion and salmonid biological opinion, or any successor biological opinions, to  
9 minimize water supply reductions for the Central Valley Project and the State Water  
10 Project, and issue guidance not later than December 31, 2015, directing the employees of  
11 those agencies to take all steps necessary to manage flow in accordance with this paragraph;

12 (5) as soon as practicable after the date of enactment of this Act and pursuant to existing  
13 authority available to the Secretary of the Interior, participate in, issue grants, or otherwise  
14 provide funding for pilot projects to increase water in reservoirs in regional river basins  
15 experiencing extreme, exceptional, or sustained drought that have a direct impact on the  
16 water supply of the State, including the Colorado River Basin, on the condition that any  
17 participation, grant, or funding by the Secretary of the Interior with respect to the Upper  
18 Division shall be with or to the respective State; and

19 (6) use all available scientific tools to identify any changes to real-time operations of the  
20 Bureau of Reclamation, State, and local water projects that could result in the availability of  
21 additional water supplies.

## 22 SEC. 309. TEMPORARY OPERATIONAL FLEXIBILITY 23 FOR FIRST FEW STORMS OF 2015 WATER YEAR.

24 (a) Findings.—Congress finds the following:

25 (1) During the 2014 water year operations of the Central Valley Project and the State  
26 Water Project, the incidental take of—

27 (A) adult Delta smelt was zero;

28 (B) juvenile Delta smelt was 78 (7.7 percent of the incidental take level);

29 (C) winter run Chinook was 339 (1.4 percent of the incidental take level);

30 (D) spring run Chinook was zero; and

31 (E) steelhead was 261 (8.7 percent of the incidental take level).

32 (2) The Central Valley Project and State Water Project exceeded an Old and Middle  
33 River flow of ^5,000 cubic feet per second over a 14-day average for brief periods after 3-  
34 storm events in February and March 2014 as a result of increased pumping, but did not  
35 cause substantially increased take of smelt or salmon.

36 (3) Hydrological conditions in dry years, such as the 2014 water year, have not triggered  
37 water pumping restrictions pursuant to the smelt biological opinion.

38 (4) The Secretaries should be allowed more flexibility to increase pumping levels without  
39 causing significant risk to the listed fish species or weakening other environmental

protections.

(5) Given the severe drought conditions in the State, significant groundwater withdrawals for irrigation due to lack of surface water supplies, and the depletion of water supplies in reservoirs, it is imperative that the Secretaries exercise the flexibility provided in this section to capture the maximum quantity of storm flows when storm flows occur in the 2015 water year, and provide for the diversion of those water supplies to the Central Valley Project and State Water Project so that agricultural operations, businesses, and homes in drought-stricken areas will have an opportunity to bolster meager supplies of water when water is available.

(b) Goal.—Consistent with avoiding additional adverse effects on listed fish species beyond the range of adverse effects authorized under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and other environmental protections described in subsection (e), the Secretaries shall authorize the Central Valley Project and the State Water Project to operate at combined levels that result in Old and Middle River flows at up to a <sup>^</sup>7500 cubic feet per second (based on United States Geological Survey gauges on Old and Middle Rivers) daily average for up to 21 cumulative days after October 1, 2014, as described in subsection (c).

(c) Days of Temporary Operational Flexibility.—The temporary operational flexibility described in subsection (b) shall be authorized on days that the California Department of Water Resources determines the daily average river flow of the Sacramento River is at, or above, 17,000 cubic feet per second, as measured at the Sacramento River at Freeport gauge maintained by the United States Geological Survey.

(d) Compliance With Endangered Species Act Authorizations.—In carrying out this section, the Secretaries may continue to impose any requirements under the biological opinions during any period of temporary operational flexibility as the Secretaries determine are reasonably necessary to avoid additional adverse effects on listed fish species beyond the range of adverse effects authorized under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(e) Other Environmental Protections.—

(1) IN GENERAL.—The actions of the Secretaries under this section shall be consistent with applicable regulatory requirements under State law, including State Water Resources Control Board Decision 1641, as that decision may be implemented in any given year.

(2) ADJUSTED RATES ALLOWED.—During the first flush of sediment out of the Delta during the 2015 water year, Old and Middle River flow may be managed at rates less negative than <sup>^</sup>5000 cubic feet per second for a minimum duration to avoid movement of adult Delta smelt to areas in the southern Delta that would be likely to increase entrainment at Central Valley Project and State Water Project pumping plants.

(3) SALMONID BIOLOGICAL OPINION.—This section shall not have any effect on the applicable requirements of the salmonid biological opinion during the period beginning on April 1, 2015 and ending May 31, 2015, unless the Secretary of Commerce finds that some or all of the applicable requirements may be adjusted during the time period to provide emergency water supply relief without resulting in additional adverse effects beyond the adverse effects authorized under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(4) MONITORING AND DATA GATHERING.—During the period in which operations are

1 carried out under this section, the Commissioner of Reclamation, in coordination with the  
2 Director of the United States Fish and Wildlife Service, the Assistant Administrator of the  
3 National Marine Fisheries Service, and the head of the California Department of Fish and  
4 Wildlife, shall undertake a monitoring program and other data gathering to ensure incidental  
5 take levels are not exceeded, and to identify potential actions, if any, necessary to mitigate  
6 impacts of the temporary operational flexibility to listed fish species.

7 (5) MITIGATING IMPACTS.—The Commissioner of Reclamation may take any action,  
8 including the transfer of appropriated funds between accounts that, in the judgment of the  
9 Commissioner, is necessary to mitigate the impacts of the operations carried out under this  
10 section, on the condition that the mitigation is consistent with the requirements of this  
11 section.

12 (f) Technical Adjustments to Target Period.—If, before temporary operational flexibility has  
13 been implemented on 21 cumulative days as described in subsection (b), the Secretaries operate  
14 the Central Valley Project and the State Water Project combined at levels that result in Old and  
15 Middle River flows less negative than <sup>^</sup>7500 cubic feet per second during days of temporary  
16 operational flexibility as defined in subsection (c), the duration of the operation shall not be  
17 counted toward the 21 cumulative days specified in subsection (b).

18 (g) Emergency Consultation; Effect on Running Averages.—

19 (1) IN GENERAL.—If necessary to implement this section, the Commissioner of  
20 Reclamation shall use the emergency consultation procedures under the Endangered Species  
21 Act of 1973 (16 U.S.C. 1531 et seq.) (including the implementing regulations at section  
22 402.05 of title 50, Code of Federal Regulations (or successor regulations)) to temporarily  
23 adjust the operating criteria under the biological opinions, solely for the 21 days of  
24 temporary operational flexibility and—

25 (A) not more than necessary to achieve the purposes of this section consistent with  
26 the environmental protections described in subsections (d) and (e); and

27 (B) including, as appropriate, adjustments to ensure that the actual flow rates during  
28 the periods of temporary operational flexibility do not count toward the 5-day and 14-  
29 day running averages of tidally filtered daily Old and Middle River flow requirements  
30 under the biological opinions.

31 (2) PROHIBITION.—Following the conclusion of the 21 days of temporary operational  
32 flexibility, the Commissioner of Reclamation shall not reinitiate consultation on the  
33 adjusted operations described in paragraph (1) if the effects on listed fish species of the  
34 operations under this section remain within the range of the effects authorized under the  
35 Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

36 (h) Level of Detail Required for Analysis.—In articulating the determinations required under  
37 this section, the Secretaries shall fully satisfy the requirements of this section but shall not be  
38 expected to provide a greater level of supporting detail for the analysis than feasible to provide  
39 within the short timeframe permitted for timely decisionmaking in response to changing  
40 conditions in the Delta.

41 (i) Duration.—The authority to carry out this section shall expire on September 30, 2015.

## 42 SEC. 310. EXPEDITING WATER TRANSFERS.



(a) In General.—Section 3405(a) of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4709(a)) is amended—

(1) by redesignating paragraphs (1) through (3) as paragraphs (4) through (6), respectively;

(2) in the matter preceding paragraph (4) (as so designated)—

(A) in the first sentence, by striking “In order to” and inserting the following:

“(1) IN GENERAL.—In order to”; and

(B) in the second sentence, by striking “Except as provided herein” and inserting the following:

“(3) TERMS.—Except as otherwise provided in this section”; and

(3) by inserting before paragraph (3) (as so designated) the following:

“(2) EXPEDITED TRANSFER OF WATER.—The Secretary shall take all necessary actions to facilitate and expedite transfers of Central Valley Project water in accordance with—

“(A) this Act;

“(B) any other applicable provision of the reclamation laws; and

“(C) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).”;

(4) in paragraph (4) (as so designated)—

(A) in subparagraph (A), by striking “to combination” and inserting “or combination”; and

(B) by striking “3405(a)(2) of this title” each place it appears and inserting “(5)”; and

(5) in paragraph (5) (as so designated), by adding at the end the following:

“(E) The contracting district from which the water is coming, the agency, or the Secretary shall determine if a written transfer proposal is complete within 45 days after the date of submission of the proposal. If the contracting district or agency or the Secretary determines that the proposal is incomplete, the district or agency or the Secretary shall state with specificity what must be added to or revised for the proposal to be complete.”; and

(6) in paragraph (6) (as so designated), by striking “3405(a)(1)(A)-(C), (E), (G), (H), (I), (L), and (M) of this title” and inserting “(A) through (C), (E), (G), (H), (I), (L), and (M) of paragraph (4)”.

(b) Conforming Amendments.—The Central Valley Project Improvement Act (Public Law 102–575) is amended—

(1) in section 3407(c)(1) (106 Stat. 4726), by striking “3405(a)(1)(C)” and inserting “3405(a)(4)(C)”; and

(2) in section 3408(i)(1) (106 Stat. 4729), by striking “3405(a)(1) (A) and (J) of this title” and inserting “subparagraphs (A) and (J) of section 3405(a)(4)”.

## SEC. 311. WARREN ACT CONTRACTS.

[To be supplied.]

## SEC. 312. ADDITIONAL WARREN ACT CONTRACTS.

[To be supplied.]

## TITLE IV—INCREASING WATER STORAGE

### SEC. 401. FINDINGS.

Congress finds that—

(1) the record drought conditions being experienced in the State as of the date of enactment of this Act are—

(A) expected to recur in the future; and

(B) likely to do so with increasing frequency;

(2) water storage is an indispensable and integral part of any solution to address the long-term water challenges of the State;

(3) Congress authorized relevant feasibility studies for 4 water storage projects in the State, including projects for—

(A) enlargement of Shasta Dam in Shasta County under section 2(a) of Public Law 96–375 (94 Stat. 1506), as reaffirmed under section 103(d)(1)(A)(i)(I) of the Calfed Bay-Delta Authorization Act (Public Law 108–361; 118 Stat. 1684);

(B) enlargement of Los Vaqueros Reservoir in Contra Costa County under section 215 of Public Law 108–7 (117 Stat. 147), as reaffirmed under section 103(d)(1)(A)(i)(II) of the Calfed Bay-Delta Authorization Act (Public Law 108–361; 118 Stat. 1684);

(C) construction of North-of-Delta Offstream Storage (Sites Reservoir) in Colusa County under section 215 of Public Law 108–7 (117 Stat. 147), as reaffirmed under section 103(d)(1)(A)(ii)(I) of the Calfed Bay-Delta Authorization Act (Public Law 108–361; 118 Stat. 1684); and

(D) construction of the Upper San Joaquin River storage (Temperance Flat) in Fresno and Madera Counties under section 215 of Public Law 108–7 (117 Stat. 147), as reaffirmed under section 103(d)(1)(A)(ii)(II) of the Calfed Bay-Delta Authorization Act (Public Law 108–361; 118 Stat. 1684);

(4)(A) as of the date of enactment of this Act, it has been more than 10 years since the authorization of the feasibility studies referred to in paragraph (3); but

(B) complete and final feasibility studies have not been prepared for any of those water storage projects;

(5) as of August 2014, only 2 of the 4 projects referred to in paragraph (3) have completed draft feasibility studies;

(6) the slow pace of work on completion of the feasibility studies for those 4 water storage projects is—

(A) unjustified; and

(B) of deep concern; and

(7) there is significant public interest in, and urgency with respect to, completing all feasibility studies and environmental reviews for the water storage projects referred to in paragraph (3), given the critical need for that infrastructure to address the water challenges of the State.

## SEC. 402. CALFED STORAGE FEASIBILITY STUDIES.

(a) In General.—Notwithstanding subparagraph (B)(i) of section 103(d)(1) of the Calfed Bay-Delta Authorization Act (Public Law 108–361; 118 Stat. 1684), the Secretary of the Interior, acting through the Commissioner of Reclamation (referred to in this title as the “Secretary”), shall complete a final feasibility study and any other applicable environmental review documents for the project described in—

(1) subparagraph (A)(i)(I) of that section by not later than December 31, 2014; and

(2) subparagraph (A)(ii)(II) of that section by not later than July 31, 2015.

(b) Environmental Reviews.—In carrying out subsection (a), the Secretary—

(1) shall ensure that—

(A) all applicable reviews, including reviews required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), are completed as expeditiously as practicable; and

(B) the shortest applicable process under that Act is used, including in the completion of—

(i) feasibility studies;

(ii) draft environmental impact statements; and

(iii) final environmental impact statements; and

(2) shall not be required to complete a draft or final environmental impact statement if the Commissioner of Reclamation determines, and the Secretary concurs, that the project fails to meet applicable Federal cost-benefit requirements or standards.

(c) Accountability.—

(1) IN GENERAL.—If the Secretary determines that an environmental review document for the water storage projects referred to in section 103(d)(1) of the Calfed Bay-Delta Authorization Act (Public Law 108–361; 118 Stat. 1684) will not be completed according to the schedule specified in subsection (a), not later than 14 days after the determination, the Secretary shall notify the Committee on Energy and Natural Resources and the Subcommittee on Energy and Water Development of the Committee on Appropriations of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives.

(2) INCLUSIONS.—The notification shall include—

(A) an explanation of the delay;



(B) the anticipated length of the delay and the revised completion date; and

(C) the steps that the Secretary will take to mitigate the delay, including, at a minimum, a request to reprogram existing funds appropriated to the Secretary to meet the revised completion deadline.

(d) Requirement.—The Secretary shall carry out the procedures described in subsection (c) for each subsequent delay beyond the revised completion deadline.

## SEC. 403. WATER STORAGE PROJECT CONSTRUCTION.

(a) In General.—The Secretary may partner or enter into an agreement on the water storage projects identified in section 103(d)(1) of the Calfed Bay-Delta Authorization Act (Public Law 108–361; 118 Stat. 1684) (and Acts supplemental and amendatory to the Act) with local joint powers authorities formed pursuant to State law by irrigation districts and other local water districts and local governments within the applicable hydrologic region, to advance those projects.

[(b) Placeholder – authorization issue.]

## SEC. 404. OTHER STORAGE FEASIBILITY STUDIES.

(a) Definition of Qualifying Project.—In this section, the term “qualifying project” means any new surface water storage project constructed on land administered by the Department of the Interior in a State in which the Bureau of Reclamation has jurisdiction, but excluding any easement, right-of-way, lease, or private holding located on such land.

(b) Lead Agency.—

(1) QUALIFYING PROJECTS WITHIN JURISDICTION OF BUREAU OF RECLAMATION.—The Bureau of Reclamation shall serve as the lead agency for purposes of coordinating all reviews, analyses, opinions, statements, permits, licenses, and other approvals or decisions required under Federal law (including regulations) to construct qualifying projects within the jurisdiction of the Bureau.

(2) QUALIFYING PROJECTS OUTSIDE JURISDICTION OF BUREAU OF RECLAMATION.—If the site of a qualifying project is not located in a State in which the Bureau of Reclamation has jurisdiction, the Secretary shall, by not later than 45 days after the date of receipt of an application for the qualifying project—

(A) designate an alternate agency within the Department of the Interior to serve as the lead agency for purposes of coordinating all reviews, analyses, opinions, statements, permits, licenses, and other approvals or decisions required under Federal law (including regulations) to construct the qualifying project; or

(B) in consultation with the heads of other Federal departments and agencies, identify the appropriate lead agency for the qualifying project.

(c) Cooperating Agencies.—

(1) FEDERAL DEPARTMENTS AND AGENCIES.—The lead agency designated under paragraph (1) or (2) of subsection (b) shall—

(A) as soon as practicable after receipt of an application for a qualifying project,

1 identify any Federal department or agency that may have jurisdiction over a review,  
2 permit, license, approval, or decision required for the qualifying project under  
3 applicable Federal laws (including regulations); and

4 (B) as soon as practicable after the date of identification under subparagraph (A)—

5 (i) notify each applicable department or agency of the identification; and

6 (ii) designate the department or agency as a cooperating agency, unless the  
7 department or agency—

8 (I) has no jurisdiction or authority with respect to the qualifying project;

9 (II) has no expertise or information relevant to the qualifying project or  
10 any review, permit, license, approval, or decision associated with the  
11 qualifying project; or

12 (III) does not intend—

13 (aa) to submit comments regarding the qualifying project; or

14 (bb) to conduct any review of the qualifying project or make any  
15 decision with respect to the qualifying project in a manner other than in  
16 cooperation with the Bureau of Reclamation.

17 (2) STATES.—A State in which a qualifying project is proposed to be carried out may  
18 elect, consistent with Federal and State law, to participate as a cooperating agency, if the  
19 lead agency designated for the proposed qualifying project under paragraph (1) or (2) of  
20 subsection (b) determines that the applicable agency of the State—

21 (A) has jurisdiction over the qualifying project under applicable Federal or State  
22 law;

23 (B) is required to conduct or issue a review of the qualifying project; and

24 (C) is required to make a determination regarding issuing a permit, license, or  
25 approval of the qualifying project.

26 (d) Duties of Lead Agency.—

27 (1) IN GENERAL.—Not later than 30 days after the date of receipt of an application for  
28 approval of a qualifying project, the lead agency shall hold a meeting among the applicant,  
29 the lead agency, and all cooperating agencies to establish, with respect to the qualifying  
30 project, all applicable—

31 (A) requirements;

32 (B) review processes; and

33 (C) stakeholder responsibilities.

34 (2) SCHEDULE.—

35 (A) ESTABLISHMENT.—Not later than 30 days after the date of the meeting under  
36 paragraph (1), the lead agency, in consultation with the attendees of the meeting, shall  
37 establish a schedule for completion of the qualifying project, taking into consideration,  
38 among other relevant factors—

(i) the responsibilities of cooperating agencies under applicable laws and regulations;

(ii) the resources available to the cooperating agencies and non-Federal project stakeholders;

(iii) the overall size and complexity of the qualifying project;

(iv) the overall schedule for, and cost of, the qualifying project; and

(v) the sensitivity of the natural and historic resources that may be affected by the qualifying project.

(B) REQUIREMENTS.—On establishment of a schedule for a qualifying project under subparagraph (A), the lead and cooperating agencies shall—

(i) to the maximum extent practicable, adhere to the schedule; and

(ii) submit to the Committee on Environment and Public Works of the Senate and the Committee on Natural Resources of the House of Representatives on a semiannual basis a report describing any delays in the schedule, including a description of—

(I) the reasons for the delay;

(II) the actions that the lead and cooperating agencies will take to minimize the delay; and

(III) a revised schedule for the qualifying project, if applicable.

(e) Environmental Reviews.—

(1) SINGLE, UNIFIED ENVIRONMENTAL REVIEW DOCUMENT.—

(A) IN GENERAL.—The lead agency with respect to a qualifying project, in consultation with appropriate stakeholders and cooperating agencies, shall determine whether a single, unified environmental review document relating to the qualifying project is sufficient to comply with applicable Federal laws (including regulations), including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(B) ACTION ON DECLINATION.—If, after consultation under subparagraph (A), a lead agency determines not to adopt a single, unified environmental review document relating to a qualifying project—

(i) the lead agency shall—

(I) document the reasons for the determination; and

(II) submit to the Secretary a report describing those reasons; and

(ii) the Secretary may require the adoption of a single, unified document at the discretion of the Secretary, based on good cause.

(2) ENVIRONMENTAL ASSESSMENT.—Except as provided in paragraph (4), if the lead agency with respect to a qualifying project, in consultation with cooperating agencies, determines that an environmental assessment is sufficient to comply with the requirements of this subsection and other applicable Federal laws (including regulations)—

(A) the public comment period for a draft environmental assessment shall be not more than 60 days after the date of publication in the Federal Register of notice of the public issuance of that draft; and

(B) the lead agency shall issue the final environmental assessment by not later than 180 days after the end of the period for public comments on the draft environmental assessment.

(3) ENVIRONMENTAL IMPACT STATEMENT.—Except as provided in paragraph (4), if the lead agency with respect to a qualifying project, in consultation with cooperating agencies, determines that an environmental impact statement is required to comply with the requirements of this subsection and other applicable Federal laws (including regulations)—

(A) the public comment period for a draft environmental impact statement shall be not more than 60 days after the date of publication in the Federal Register of notice of the public issuance of that draft; and

(B) the lead agency shall issue the final environmental impact statement by not later than 1 year after the end of the period for public comments on the draft environmental assessment.

(4) MODIFICATION OF SCHEDULE.—

(A) IN GENERAL.—In carrying out paragraphs (2) and (3), the lead agency with respect to a qualifying project may modify the schedule of the qualifying project if—

(i) the lead agency can demonstrate good cause, such as the need for additional time to comply with other statutory or regulatory requirements (other than the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)); and

(ii) the head of the lead agency submits to Congress a written determination describing the cause and reasons for the modification by not later than 30 days before the original scheduled deadline; or

(ii) the lead agency, the project sponsor, the joint lead agency (if applicable), and all participating and cooperating agencies agree to the modification.

(B) LIMITATION.—Unless the requirements of clause (i) or (ii) of subparagraph (A) are met, no modification under subparagraph (A) shall result in the postponement of the issuance of—

(i) a final environmental assessment by more than 1 year; or

(ii) a final environmental impact statement by more than 2 years.

(C) REVISED SCHEDULE.—If a modification is made pursuant to this paragraph, the lead agency shall publish and adhere to the applicable revised schedule, except as provided in clause (i) or (ii) of subparagraph (A).

(5) REQUIREMENTS.—On commencement of the environmental review process under this subsection, the lead and cooperating agencies shall, as soon as practicable—

(A) make available to all stakeholders of the qualifying project information regarding—

(i) the environmental and socioeconomic resources located within the area of the qualifying project; and

(ii) the general locations of the alternatives under consideration; and

(B) identify any issues of concern regarding the potential environmental or socioeconomic effects of the qualifying project, including any issues that could substantially delay or prevent an agency from granting a permit or other approval that is needed for a study relating to the qualifying project.

(f) Concurrent Review Actions.—

(1) IN GENERAL.—Any review, analysis, permit, license, approval, or decision regarding a qualifying project made by a Federal, State, or local government agency shall be—

(A) conducted, to the maximum extent practicable, concurrently with any other applicable government agency; and

(B) incorporated in the schedule for the qualifying project under subsection (d)(2).

(2) REQUIREMENT.—The lead and cooperating agencies for a qualifying project shall formulate and implement administrative, policy, and procedural mechanisms to enable adherence to the schedule for the qualifying project in a timely, coordinated, and environmentally responsible manner.

(3) GUIDANCE.—The Secretary shall issue guidance regarding the use of programmatic approaches to carry out the environmental review process that, to the maximum extent practicable—

(A) eliminates repetitive discussions of the same issues;

(B) focuses on the actual issues ripe for analysis at each level of review;

(C) establishes a formal process for coordinating with participating and cooperating agencies, including the establishment of a list of all data required to carry out an environmental review process; and

(D) complies with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and all other applicable laws and regulations.

(g) Administrative Record and Data Management.—

(1) IN GENERAL.—The lead agency shall—

(A) be responsible for compiling the administrative record of the information used as the basis for decisions relating to a qualifying project; and

(B) to the maximum extent practicable and consistent with Federal law, make available all data regarding the qualifying project in a format that is accessible via electronic means for project stakeholders, cooperating agencies, and the public.

(2) REPORTS.—Not less frequently than once each year, the lead agency shall submit a progress report regarding a qualifying project to project stakeholders, cooperating agencies, the Committee on Environment and Public Works of the Senate, and the Committee on Natural Resources of the House of Representatives.

(h) Participation by Non-Federal Project Sponsors.—

(1) APPLICATION TO SERVE AS COOPERATING AGENCY.—A non-Federal sponsor of a qualifying project may submit to the lead Secretary an application to serve as a cooperating agency of the qualifying project for purposes of preparing any necessary documents relating to the qualifying project, including an environmental review, if—

(A) the non-Federal sponsor is a public agency as defined under the laws of the State in which the non-Federal sponsor is located;

(B) the non-Federal sponsor agrees to adhere to—

(i) all required Federal laws (including regulations) in carrying out the qualifying project; and

(ii) all decisions regarding the qualifying project that have been agreed on by other stakeholders of the qualifying project; and

(C) the applicable lead agency certifies that participation by the non-Federal sponsor will not inappropriately bias the qualifying project in favor of the non-Federal sponsor.

(2) FUNDS.—Any funds contributed by a non-Federal sponsor to a qualifying project—

(A) may be accepted to maintain or accelerate progress on the qualifying project, subject to the condition that the Secretary shall—

(i) review the use of the funds; and

(ii) certify in writing that the funds—

(I) are used solely to complete applicable environmental reviews; and

(II) do not unduly influence any permit or approval decision regarding the qualifying project; and

(B) shall be applied toward the non-Federal cost-share of the qualifying project.

(i) Applicability to Calfed Storage Studies.—For any feasibility study referred to in section 401(3), this section shall apply to all activities to be carried out under the study on or after the date of enactment of this Act that would lead to congressional authorization of an applicable project for construction.

## SEC. 405. DAM SAFETY PROJECTS WITH INCREASED STORAGE COMPONENT.

(a) Additional Project Benefits.—The Reclamation Safety of Dams Act of 1978 is amended—

(1) in section 3 (43 U.S.C. 507), by striking “Construction” and inserting “Except as provided in section 5B, construction”; and

(2) by inserting after section 5A (43 U.S.C. 509a) the following:

### “SEC. 5B. ADDITIONAL PROJECT BENEFITS.

“(a) In General.—Notwithstanding section 3, if the Secretary, in the judgment of the Secretary, makes a determination described in subsection (b), the Secretary may develop any additional project benefit—



1 “(1) through the construction of new or supplementary works on a project in conjunction  
2 with the activities carried out by the Secretary pursuant to section 2; and

3 “(2) subject to the conditions described in the feasibility study relating to the project.

4 “(b) Description of Determination.—A determination referred to in subsection (a) is a  
5 determination by the Secretary that—

6 “(1) an additional project benefit, including additional conservation storage capacity, is—

7 “(A) necessary; and

8 “(B) in the interests of the United States; and

9 “(2) the project benefit proposed to be carried out is—

10 “(A) feasible; and

11 “(B) not inconsistent with the purposes of this Act.

12 “(c) Requirements.—The costs associated with developing an additional project benefit under  
13 this section shall be—

14 “(1) allocated among each entity that receives a benefit from the additional conservation  
15 storage capacity, subject to an agreement between the State and Federal funding agencies  
16 regarding those allocations; and

17 “(2) repaid in accordance with all applicable provisions of Federal reclamation law (the  
18 Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and  
19 amendatory of that Act (43 U.S.C. 371 et seq.).”.

20 (b) San Luis Reservoir Expansion.—Section 103(f)(1)(A) of the Calfed Bay-Delta  
21 Authorization Act (Public Law 108–361; 118 Stat. 1694) is amended—

22 (1) by striking “Funds” and inserting the following:

23 “(i) IN GENERAL.—Funds”; and

24 (2) by adding at the end the following:

25 “(ii) ENVIRONMENTAL REVIEWS AND FEASIBILITY STUDY.—The Commissioner  
26 of Reclamation shall submit to Congress—

27 “(I) an expansion draft environmental impact statement and feasibility  
28 study relating to the San Luis Reservoir by not later than April 1, 2016; and

29 “(II) a final environmental impact statement relating to the San Luis  
30 Reservoir by not later than December 31, 2016.”.

## 31 SEC. 406. UPDATING WATER OPERATIONS MANUALS 32 FOR NON-FEDERAL PROJECTS.

33 (a) Definitions.—In this section:

34 (1) NON-FEDERAL PROJECT.—

35 (A) IN GENERAL.—The term “non-Federal project” means a non-Federal reservoir  
36 project operated for flood control in accordance with rules prescribed by the Secretary

pursuant to section 7 of the Act of December 22, 1944 (commonly known as the “Flood Control Act of 1944”) (58 Stat. 890, chapter 665).

(B) EXCLUSION.—The term “non-Federal project” does not include any dam or reservoir owned by—

(i) the Bureau of Reclamation; or

(ii) the Corps of Engineers.

(2) OWNER.—The term “owner” with respect to a non-Federal project, does not include—

(A) the Secretary;

(B) the Secretary of the Interior; or

(C) the head of any other Federal department or agency, notwithstanding any Federal monetary contribution made toward the construction cost of the relevant non-Federal project, if the contribution is predicated a on flood control or other specific benefit.

(3) SECRETARY.—The term “Secretary” means the Secretary of the Army.

(b) Review by Secretary.—

(1) IN GENERAL.—Not later than 1 year after the date of receipt of a request from the owner of a non-Federal project, the Secretary, in consultation with the owner, shall review the water control manual and flood control rule curves and any operational or structural modifications proposed by the owner, including the use of improved weather forecasting and run-off forecasting methods, to enhance the existing purposes of the non-Federal project.

(2) REPORT.—Not later than 90 days after the date of completion of a review under paragraph (1), the Secretary shall submit to the owner of the applicable non-Federal project a report describing the results of the review.

(3) PRIORITY.—In carrying out of this subsection, the Secretary shall give priority to review and revision of water control manuals and flood control rule curves for any non-Federal project—

(A) that is located in a State in which a drought emergency has been declared during the 1-year period ending on the date of review by the Secretary;

(B) the owner of which has submitted to the Secretary a formal request to review or revise the operations manual or rule curves to accommodate new watershed data or proposed project modifications or operational changes;

(C) the water control manual and hydrometeorological information establishing the flood control rule curves of which have not been revised during the 20-year period ending on the date of review by the Secretary;

(D) with respect to which a completed probable maximum flood analysis or other data indicates that revisions of the project control manual or rule curves are likely to enhance water supply benefits and flood control operations; and

(E) modifications or operational changes proposed by the owner of which are likely



to enhance water supply benefits and flood control operations.

(4) NON-FEDERAL CONTRIBUTIONS.—The Secretary may accept non-Federal funds for all or a portion of the cost of carrying out a review or revision of water control manuals and rule curves for non-Federal projects under this subsection.

## SEC. 407. CENTRAL VALLEY PROJECT.

(a) Cooperative Agreements.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, to determine the feasibility of an agreement for long-term use of an existing or expanded non-Federal storage or conveyance facility to augment Federal water supply, ecosystem, and operational flexibility benefits, the Secretary shall offer to enter into cooperative agreements with non-Federal entities to provide replacement water supplies for drought relief for—

(A) contractors of the Central Valley Project (as defined in section 3403 of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706));

(B) units of the National Wildlife Refuge System;

(C) State wildlife areas; and

(D) private wetland areas.

(2) REQUIREMENTS.—A cooperative agreement under this subsection shall—

(A) include the purchase of storage capacity in non-Federal facilities from willing sellers; and

(B) provide reimbursement for the temporary use of available capacity in existing above-ground, off-stream storage and associated conveyance facilities owned by local water agencies.

(b) Report.—Not later than 2 years after the date of enactment of this Act, the Secretary shall submit to the Chief of the National Wildlife Refuge System and contractors of the Central Valley Project a report describing the feasibility of the agreement for long-term use described in subsection (a)(1).

## TITLE V—WATER RIGHTS PROTECTIONS

### SEC. 501. PROTECTIONS FOR STATE WATER PROJECT CONTRACTORS.

(a) In General.—If, as a result of the application of this Act, the California Department of Fish and Wildlife makes an election described in subsection (b), the water supply benefits resulting from the election that accrue to the Central Valley Project, if any, shall be shared equally with the State Water Project.

(b) Description of Elections.—An election referred to in subsection (a) is an election—

(1) to revoke the consistency determination pursuant to section 2080.1 of the California Fish and Game Code;

(2) to amend or issue a new consistency determination pursuant to that section of the

California Fish and Game Code in a manner that results in reduced water supply to the State Water Project, as compared to the water supply available under the smelt biological opinion and the salmonid biological opinion; or

(3) to require an authorization for taking under section 2081 of the California Fish and Game Code for the operation of the State Water Project in a manner that results in reduced water supply to the State Water Project, as compared to the water supply available under the smelt biological opinion and the salmonid biological opinion.

## SEC. 502. AREA OF ORIGIN PROTECTIONS.

(a) Requirement.—With respect to the operation of the Central Valley Project (as defined in section 302), the Secretary of the Interior shall adhere to the water rights laws of the State governing water rights priorities by honoring water rights senior to those held by the United States for operation of the Central Valley Project, regardless of the source of priority, including—

(1) any appropriative water right initiated prior to December 19, 1914; and

(2) any water right or other priority perfected, or expected to be perfected, pursuant to part 2 of division 2, article 1.7 (beginning with section 1215 of chapter 1 of part 2 of division 2, sections 10505, 10505.5, 11128, 11460, 11461, 11462, and 11463, and sections 12200 to 12220) of the California Water Code.

(b) Actions Under ESA.—Any action carried out by the Secretary of the Interior or the Secretary of Commerce pursuant to section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) that requires a diversion to be bypassed, or that involves the release of water from any Central Valley Project water storage facility, shall be carried out in accordance with the water rights priorities established by law in the State.

## SEC. 503. NO REDIRECTED ADVERSE IMPACTS.

The Secretary of the Interior shall ensure that, except as otherwise provided for in a water service or repayment contract, an action carried out in compliance with a legal obligation imposed pursuant to, or as a result of, this Act, including such an action under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) or any other Federal law (including regulations), shall not cause a redirected adverse water supply or an adverse fiscal impact to any individual or entity within the boundaries of the Sacramento River watershed or the State Water Project.

## SEC. 504. EFFECT ON STATE LAWS.

Nothing in this Act preempts any State law in effect on the date of enactment of this Act, including area of origin and other water rights protections.

## TITLE VI—MISCELLANEOUS

## SEC. 601. AUTHORIZED SERVICE AREA.

(a) In General.—The authorized service area of the Central Valley Project authorized under the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706) shall include the area within the boundaries of the Kettleman City Community Services District, California, as

in existence on the date of enactment of this Act.

(b) Long-term Contract.—

(1) IN GENERAL.—Notwithstanding the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706) and subject to paragraph (2), the Secretary of the Interior, in accordance with the reclamation laws, shall enter into a long-term contract with the Kettleman City Community Services District, California, under terms and conditions mutually agreeable to the parties, for the delivery of up to 900 acre-feet of Central Valley Project water for municipal and industrial use.

(2) LIMITATION.—Central Valley Project water deliveries authorized under the contract entered into under paragraph (1) shall be limited to the minimal quantity necessary to meet the immediate needs of the Kettleman City Community Services District, California, in the event that local supplies or State Water Project allocations are insufficient to meet those needs.

(c) Permit.—The Secretary shall apply for a permit with the State for a joint place of use for water deliveries authorized under the contract entered into under subsection (b) with respect to the expanded service area under subsection (a), consistent with State law.

(d) Additional Costs.—If any additional infrastructure, water treatment, or related costs are needed to implement this section, those costs shall be the responsibility of the non-Federal entity.

## SEC. 602. RESCHEDULED WATER.

(a) In General.—In connection with operations of the Central Valley Project, California, if the San Luis Reservoir does not fill by the last day of February of any year, the Secretary of the Interior shall permit any entity with an agricultural water service or repayment contract for the delivery of water from the Delta Division or the San Luis Unit to reschedule into the immediately following contract year (March 1 through the last day of February) any unused Central Valley Project water previously allocated for irrigation purposes.

(b) Apportionment.—If water remaining in Federal storage in San Luis Reservoir on the last day of February of any year is insufficient to meet all rescheduling requests under subsection (a), the Secretary of the Interior shall, based on contract quantity, apportion among all contractors that request to reschedule water all water remaining in San Luis Reservoir on the last day of February of the applicable year.

(c) Availability of Additional Water.—The Secretary shall make all reasonable efforts to make available additional rescheduled water, if the efforts do not interfere with the Central Valley Project operations in the contract year for which Central Valley Project water has been rescheduled.

## SEC. 603. FISHERIES DISASTER DECLARATION.

[TO BE SUPPLIED.]

## SEC. 604. RESTORATION FUND ADVISORY BOARD.

Section 3407 of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4726) is amended by adding at the end the following:

1 “(g) Report on Expenditure of Funds.—

2 “(1) IN GENERAL.—For each fiscal year, the Secretary, in consultation with the Advisory  
3 Board, shall submit to Congress a plan for the expenditure of all of the funds deposited into  
4 the Restoration Fund during the preceding fiscal year.

5 “(2) CONTENTS.—The plan shall include an analysis of the cost-effectiveness of each  
6 expenditure.

7 “(h) Advisory Board.—

8 “(1) ESTABLISHMENT.—There is established the Restoration Fund Advisory Board  
9 (referred to in this subsection as the ‘Advisory Board’), which shall be composed of 14  
10 members appointed by the Secretary.

11 “(2) MEMBERSHIP.—

12 “(A) IN GENERAL.—The Secretary shall appoint to the Advisory Board members  
13 who represent the various Central Valley Project stakeholders, of whom—

14 “(i) 3 members shall be agricultural users of the Central Valley Project;

15 “(ii) 2 members shall be municipal and industrial users of the Central Valley  
16 Project;

17 “(iii) 3 members shall be power contractors of the Central Valley Project;

18 “(iv) 1 member shall be a representative of a Federal wildlife refuge that has  
19 entered into a contract with the Bureau of Reclamation for Central Valley Project  
20 water supplies;

21 “(v) 1 member shall represent a nongovernmental organization involved in the  
22 protection and restoration of California fisheries;

23 “(vi) 1 member shall represent the commercial fishing industry;

24 “(vii) 1 member shall represent the recreational fishing industry; and

25 “(viii) 2 members shall be appointed at the discretion of the Secretary.

26 “(B) OBSERVER.—The Secretary and the Secretary of Commerce may each  
27 designate a representative to act as an observer of the Advisory Board.

28 “(C) CHAIRPERSON.—The Secretary shall appoint 1 of the members described in  
29 subparagraph (A) to serve as chairperson of the Advisory Board.

30 “(3) TERMS.—The term of each member of the Advisory Board shall be 4 years.

31 “(4) DATE OF APPOINTMENTS.—The appointment of a member of the Advisory Board  
32 shall be made not later than—

33 “(A) the date that is 120 days after the date of enactment of this subsection; or

34 “(B) in the case of a vacancy on the Advisory Board described in paragraph (5), the  
35 date that is 120 days after the date on which the vacancy occurs.

36 “(5) VACANCIES.—

37 “(A) IN GENERAL.—A vacancy on the Advisory Board shall be—

1 “(i) filled in the manner in which the original appointment was made; and

2 “(ii) subject to any conditions that applied with respect to the original  
3 appointment.

4 “(B) FILLING UNEXPIRED TERM.—An individual selected to fill a vacancy on the  
5 Advisory Board shall be appointed for the unexpired term of the member replaced.

6 “(C) EXPIRATION OF TERMS.—The term of a member shall not expire before the date  
7 on which the successor of the member takes office.

8 “(6) REMOVAL.—A member of the Advisory Board may be removed from office by the  
9 Secretary.

10 “(7) NONAPPLICABILITY OF FACCA.—The Advisory Board shall not be subject to the  
11 requirements of the Federal Advisory Committee Act (5 U.S.C. App.).

12 “(8) DUTIES.—The Advisory Board shall—

13 “(A) meet not less frequently than semiannually to develop and provide to the  
14 Secretary recommendations regarding priorities and spending levels on projects and  
15 programs carried out under this title;

16 “(B) ensure that any advice or recommendations provided by the Advisory Board  
17 reflect the independent judgment of the Advisory Board;

18 “(C) not later than December 31, 2015, and annually thereafter, submit to the  
19 Secretary and Congress the recommendations under subparagraph (A); and

20 “(D) not later than December 31, 2015, and biennially thereafter, submit to Congress  
21 a report that describes the progress made in achieving the actions described in section  
22 3406.

23 “(9) ADMINISTRATION.—With the consent of the appropriate department or agency head,  
24 the Advisory Board may use the facilities and services of any Federal department or agency.

25 “(10) COOPERATION AND ASSISTANCE.—

26 “(A) IN GENERAL.—On receipt of a request from the chairperson of the Advisory  
27 Board for information or assistance to facilitate carrying out this section, the Secretary  
28 shall promptly provide such information or assistance, unless otherwise prohibited by  
29 law.

30 “(B) OFFICE SPACE AND ASSISTANCE.—The Secretary shall provide to the Advisory  
31 Board—

32 “(i) appropriate and adequate office space, together with such equipment, office  
33 supplies, and communications facilities and services as may be necessary for the  
34 operation of the Advisory Board; and

35 “(ii) necessary maintenance services for such offices, equipment, and  
36 facilities.”.

## 37 SEC. 605. WATER OPERATIONS REVIEW PANEL.

38 (a) Establishment.—There is established a panel, to be known as the “Water Operations

Review Panel” (referred to in this section as the “Panel”).

(b) Membership.—

(1) COMPOSITION.—The Panel shall be composed of 5 members, to be appointed by the Secretary of the Interior, in consultation with the Secretary of Commerce, of whom—

(A) 1 member shall be a former State-elected official, who shall be the Chairperson of the Panel (referred to in this section as the “Chairperson”);

(B) 2 members shall be fisheries biologists, of whom—

(i) 1 shall have expertise in Delta smelt; and

(ii) 1 shall have expertise in salmonids; and

(C) 2 members shall be engineers with substantial expertise in water operations.

(2) RECOMMENDATIONS.—The Secretary of the Interior shall take into consideration the recommendations—

(A) of the Governor of the State, for purposes of appointing a member under paragraph (1)(A); and

(B) of the Director of the California Department of Water Resources, for purposes of appointing members under paragraph (1)(C).

(3) PROHIBITION ON FEDERAL GOVERNMENT EMPLOYMENT.—For a period of at least 3 years prior to appointment to the Panel, a member appointed to the Panel under paragraph (1) shall not have been an employee of the Federal Government.

(4) DATE OF APPOINTMENTS.—The appointment of a member of the Panel shall be made not later than—

(A) the date that is 120 days after the date of enactment of this Act; or

(B) in the case of a vacancy on the Panel described in subsection (c)(2), the date that is 120 days after the date on which the vacancy occurs.

(c) Term; Vacancies.—

(1) TERMS.—A member of the Panel shall be appointed for a term of 3 years, except that, with respect to the members initially appointed to the Panel under this section—

(A) the Chairperson shall be appointed for a term of 3 years;

(B) of the members appointed under subsection (b)(1)(B)—

(i) 1 member shall be appointed for a term of 1 year; and

(ii) 1 member shall be appointed for a term of 2 years; and

(C) of the members appointed under subsection (b)(1)(C)—

(i) 1 member shall be appointed for a term of 1 year; and

(ii) 1 member shall be appointed for a term of 2 years.

(2) VACANCIES.—

(A) IN GENERAL.—A vacancy on the Panel shall be—



- 1 (i) filled in the manner in which the original appointment was made; and  
2 (ii) subject to any conditions that applied with respect to the original  
3 appointment.

4 (B) TERM.—An individual appointed to fill a vacancy on the Panel shall be  
5 appointed for the unexpired term of the member being replaced.

6 (3) EXPIRATION OF TERMS.—The term of any member shall not expire before the date on  
7 which the successor of the member takes office.

8 (d) Removal.—A member of the Panel may be removed from office by the Secretary of the  
9 Interior.

10 (e) Nonapplicability of FACA.—The Panel shall not be subject to the requirements of the  
11 Federal Advisory Committee Act (5 U.S.C. App.).

12 (f) Duties.—

13 (1) ASSESSMENT AND REPORT ON OPERATIONAL DECISIONS.—

14 (A) IN GENERAL.—Not later than November 30, 2015, and not later than November  
15 30 of each year thereafter, the Panel shall submit to the Committees and  
16 Subcommittees described in subparagraph (B) a report that includes—

- 17 (i) an assessment of the operational decisions under this Act; and  
18 (ii) recommendations for the prospective implementation of this Act.

19 (B) COMMITTEES AND SUBCOMMITTEES.—The Committees and Subcommittees  
20 referred to in subparagraph (A) are—

- 21 (i) the Committee on Environment and Public Works of the Senate;  
22 (ii) the Subcommittee on Energy and Water Development of the Committee on  
23 Appropriations of the Senate;  
24 (iii) the Committee on Natural Resources of the House of Representatives; and  
25 (iv) the Subcommittee on Energy and Water Development of the Committee on  
26 Appropriations of the House of Representatives.

27 (C) REQUIREMENTS FOR ASSESSMENT.—In making the assessment under  
28 subparagraph (A)(i), the Panel shall review and evaluate—

- 29 (i) the decisions of the Director, the Assistant Administrator, and the  
30 Commissioner in implementing this Act and other Federal laws applicable to the  
31 operations of the Central Valley Project and the State Water Project;  
32 (ii) the compliance of the Director, the Assistant Administrator, and the  
33 Commissioner with the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.)  
34 with respect to operations of the Central Valley Project and the State Water  
35 Project; and  
36 (iii) the efforts of the Director, the Assistant Administrator, and the  
37 Commissioner to minimize water supply disruptions while complying with the  
38 Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and this Act.

(D) REQUIREMENTS FOR RECOMMENDATIONS.—The Panel shall make recommendations under subparagraph (A)(ii) for prospective actions and potential actions for further study to better achieve the purposes of this Act or the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) as applied to the operations of the Central Valley Project and the State Water Project, including proposals—

(i) that in combination, increase—

(I) the survival of listed fish species; and

(II) water supplies for the Central Valley Project and the State Water Project;

(ii) to increase the survival of listed fish species with little to no adverse effects on water supplies for the Central Valley Project and the State Water Project that would result from taking the specific proposed action recommended;

(iii) to increase the water supplies described in clause (ii) with little to no adverse effects on the survival of listed fish species; and

(iv) that respond to the annual reports of the Delta Science Program Independent Review Panel regarding long-term operations opinions.

(2) 5-YEAR ASSESSMENT.—

(A) IN GENERAL.—Not later than 5 years after the date of enactment of this Act, and every 5 years thereafter, the Panel shall publish a report that—

(i) evaluates the effectiveness of this Act; and

(ii) makes legislative recommendations regarding—

(I) any provision of this Act that should be amended or repealed due to ineffectiveness or any other reason; and

(II) alternative legislation or modifications to this Act that could provide additional water supplies for the Central Valley Project and the State Water Project without reducing the survival of listed fish species.

(B) GOAL.—To the maximum extent practicable, the Panel shall submit legislative recommendations that, in the aggregate, would—

(i) improve water supplies for the Central Valley Project and the State Water Project; and

(ii) increase the survival of listed fish species.

(C) SUBMISSION TO CONGRESS.—The Panel shall submit to the Committees and Subcommittees of Congress described in paragraph (1)(B) the legislative recommendations of the Panel.

(3) SUBMISSION OF COMMENTS AND PROPOSALS TO PANEL.—

(A) IN GENERAL.—In preparing the reports under paragraphs (1) and (2), the Panel shall solicit comments and proposals from any interested individuals and entities, in accordance with subparagraph (B).



(B) SCHEDULE.—The Panel shall publish—

(i) a schedule for the receipt of comments and proposals under subparagraph (A); and

(ii) instructions regarding how to submit to the Panel those comments and proposals.

(g) Cooperation and Assistance.—

(1) IN GENERAL.—On request of the Chairperson for information or assistance to facilitate carrying out this section, the Secretary of the Interior and the Secretary of Commerce shall promptly provide such information or assistance to the Panel, unless otherwise prohibited by law.

(2) PROVISION OF OFFICE SPACE; EQUIPMENT.—The Secretary of the Interior shall provide to the Panel—

(A) appropriate and adequate office space;

(B) such equipment, office supplies, and communications facilities and services as may be necessary for the operation of the Panel; and

(C) any necessary maintenance services for the offices, equipment, and facilities provided under subparagraphs (A) and (B).

## SEC. 606. CONTINGENCY IN EVENT OF CONTINUING RESOLUTION FOR FISCAL YEAR 2015.

Any deadline applicable to a Federal department or agency, as described in sections 103(b), 103(d), 202, 204, and 205, shall be extended by the number of days that any resolution providing continuing appropriations for the United States Fish and Wildlife Service or the National Marine Fisheries Service for fiscal year 2015 is in effect after January 1, 2015, if—

(1) such a continuing resolution is enacted;

(2) the continuing resolution does not include funding for the actions of the applicable department or agency required by this Act (or an amendment made by this Act); and

(3) a funding shortfall remains for the actions of the applicable department or agency after consultation by the head of the department or agency with the California Department of Water Resources, Central Valley Project and State Water Project contractors, and the Interagency Ecological Program.

**From:** Tom Birmingham  
**Sent:** Thursday, October 16, 2014 4:18 PM  
**To:** 'Marklund, Chris'  
**CC:** 'Nelson, Damon'; dbernhardt@bhfs.com  
**Subject:** Edits to Water Bill  
**Attachments:** Draft Edits for Water Bill.docx

Chris,

David Bernhardt informed me that he had spoken to you and that you requested comments on the most recent language proposed by the Senator Feinstein's office. I believe I had related to you that I had given proposed changes to Damon Nelson on a hard copy when I was in DC last week. The attached document was prepared by Damon, and it incorporates the edits I provided to him. Damon said he was comfortable with me sharing this document with you.

Please let me know if you have any questions about these proposed edits.

Tom

*CONFIDENTIAL DRAFT LANGUAGE – DO NOT DISTRIBUTE*

Title: To provide drought relief in the State of California, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) Short Title.—This Act may be cited as the “California Drought Relief Act of 2014”.

(b) Table of Contents.—The table of contents of this Act is as follows:

Sec.1.Short title; table of contents.

Sec.2.Findings.

Sec.3.Definitions.

**TITLE I—ADJUSTING DELTA SMELT MANAGEMENT  
BASED ON INCREASED REAL-TIME MONITORING AND  
UPDATED SCIENCE**

Sec.101.Definitions.

Sec.102.Revise incidental take level calculation to reflect new science.

Sec.103.Factoring increased real-time monitoring and updated science into [dDelta](#) smelt management.

**TITLE II—ENSURING SALMONID MANAGEMENT IS  
RESPONSIVE TO NEW SCIENCE**

Sec.201.Definitions.

Sec.202.Required scientific studies.

Sec.203.Process for ensuring salmonid management is responsive to new science.

Sec.204.Pilot program to protect native anadramous fish in the Stanislaus River.

Sec.205.CALFED invasive species pilot projects in the Sacramento-San Joaquin Bay Delta and its tributaries.

Sec.206.Mark fishery and harvest management.

Sec.207.New actions to benefit Central Valley salmonids.

**TITLE III—OPERATIONAL FLEXIBILITY AND DROUGHT  
RELIEF**

Sec.301.Findings.

Sec.302.Definitions.

*CONFIDENTIAL DRAFT LANGUAGE – DO NOT DISTRIBUTE*

- 1 Sec.303.Operational flexibility in times of drought.
- 2 Sec.304.Operation of cross-channel gates.
- 3 Sec.305.Flexibility for export/inflow ratio.
- 4 Sec.306.Emergency environmental reviews.
- 5 Sec.307.Prioritizing State revolving funds during droughts.
- 6 Sec.308.Increased flexibility for regular project operations.
- 7 Sec.309.Temporary operational flexibility for first few storms of 2015 water year.
- 8 Sec.310.Expediting water transfers.
- 9 Sec.311.Warren Act contracts. [PLACEHOLDER]
- 10 Sec.312.Additional Warren Act contracts. [PLACEHOLDER]

11 **TITLE IV—INCREASING WATER STORAGE**

- 12 Sec.401.Findings.
- 13 Sec.402.Calfed storage feasibility studies.
- 14 Sec.403.Water storage project construction.
- 15 Sec.404.Other storage feasibility studies.
- 16 Sec.405.Dam safety projects with increased storage component.
- 17 Sec.406.Updating water operations manuals for non-Federal projects.
- 18 Sec.407.Central Valley Project.

19 **TITLE V—WATER RIGHTS PROTECTIONS**

- 20 Sec.501.Protections for State water project contractors.
- 21 Sec.502.Area of origin protections.
- 22 Sec.503.No redirected adverse impacts.
- 23 Sec.504.Effect on State laws.

24 **TITLE VI—MISCELLANEOUS**

- 25 Sec.601.Authorized service area.
- 26 Sec.602.Rescheduled water.
- 27 Sec.603.Fisheries disaster declaration. [PLACEHOLDER]
- 28 Sec.604.Oversight board for Restoration Fund.
- 29 Sec.605.Water operations review panel.
- 30 Sec.606.Contingency in event of continuing resolution for fiscal year 2015.

31

*CONFIDENTIAL DRAFT LANGUAGE – DO NOT DISTRIBUTE*

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) As established in the Proclamation of a State of Emergency issued by the Governor of  
4 the State on January 17, 2014, the State is experiencing record dry conditions;

5 (2) Extremely dry conditions have persisted in the State since 2012, and the drought  
6 conditions are likely to persist into the future;

7 (3) As of September 2014, the National Weather Service’s forecast does not show a high  
8 likelihood of the State experiencing above-normal precipitation for the remainder of the  
9 calendar year;

10 (4) The water supplies of the State are at record-low levels, as indicated by the fact that  
11 all major Central Valley Project reservoir levels were at 20-35 percent of capacity as of  
12 September 25, 2014;

13 (5) The lack of precipitation has been a significant contributing factor to the 6,091 fires  
14 experienced in the State as of September 15, 2014, and which covered nearly 400,000 acres;

15 (6) According to a study released by the University of California, Davis in July 2014, the  
16 drought has led to the fallowing of 428,000 acres of farmland, loss of \$810 million in crop  
17 revenue, loss of \$203 million in dairy and other livestock value, and increased groundwater  
18 pumping costs by \$454 million. The statewide economic costs are estimated to be \$2.2  
19 billion, with over 17,000 seasonal and part-time agricultural jobs lost;

20 (7) CVPIA Level II water deliveries to refuges have also been reduced by 25% in the  
21 north of Delta region, and by 35% in the south of Delta region;

22 (8) Only one-sixth of the usual acres of rice fields are being flooded this fall, which leads  
23 to a significant decline in habitat for migratory birds and an increased risk of disease at the  
24 remaining wetlands due to overcrowding of such birds;

25 (9) The drought of 2013 through 2014 constitutes a serious emergency that poses  
26 immediate and severe risks to human life and safety and to the environment throughout the  
27 State;

28 (10) The serious emergency described in paragraph (4) requires—

29 (A) immediate and credible action that respects the complexity of the water system  
30 of the State and the importance of the water system to the entire State; and

31 (B) policies that do not pit stakeholders against one another, which history shows  
32 only leads to costly litigation that benefits no one and prevents any real solutions;

33 (11) Federal law (including regulations) directly authorizes expedited decisionmaking  
34 procedures and environmental and public review procedures to enable timely and  
35 appropriate implementation of actions to respond to the type and severity of the serious  
36 emergency described in paragraph (4); and

37 (12) The serious emergency described in paragraph (4) fully satisfies the conditions  
38 necessary for the exercise of emergency decisionmaking, analytical, and public review  
39 requirements under—

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(A) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(B) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(C) water control management procedures of the Corps of Engineers described in section 222.5 of title 33, Code of Federal Regulations (including successor regulations); and

(D) the Reclamation States Emergency Drought Relief Act of 1991 (Public Law 102–250; 106 Stat. 53).

(13) The ~~2008~~ smelt biological opinion and ~~2009~~ salmonid biological opinion contain reasonable and prudent alternatives to protect listed fish species from being jeopardized by operation of the Central Valley Project and State Water Project and to prevent adverse modification of designated critical habitat;

(14) The effect of those reasonable and prudent alternatives in the biological opinions may restrict the amount of water pumping that can occur to deliver water for agricultural, municipal, industrial, groundwater, and refuge uses in California;

(15) Data on the difference between water demand and reliable water supplies for various regions south of the ~~the~~ Delta, including the San Joaquin Valley, indicate there is a significant annual gap between reliable water supplies to meet agricultural, municipal and industrial, groundwater, and refuges water needs within the South of Delta and Friant Division of the Central Valley Project and the State Water Project south of the Sacramento-San Joaquin River Delta and north of the Tehachapi mountain range and the demands of those areas. This gap varies depending on the methodology of the analysis performed, but can be represented in the following ways:

**Commented [A1]:** Agencies are verifying the accuracy of the facts within this finding.

(A) For Central Valley Project South-of-Delta water service contractors, if it is assumed that a water supply deficit is the difference in the amount of water available for allocation versus the maximum contract quantity, particularly in more recent years, then the water supply deficits that have developed from 1992 to 2014 as a result of changes besides natural variations in hydrology during this timeframe range between 720,000 and 1,100,000 acre-feet.

(B) For Central Valley Project and State Water Project water service contractors south of the Delta and north of the Tehachapi mountain range, if it is assumed that a water supply deficit is the difference between reliable water supplies, including maximum water contract deliveries, safe yield of groundwater, safe yield of local and surface supplies and long-term contracted water transfers, and water demands, including water demands from agriculture, municipal and industrial and refuge contractors, then the water supply deficit ranges between approximately 2,500,000 to 2,700,000 acre-feet.

(C) The California Water Plan evaluated outcomes under current conditions under 198 combinations of climate and growth scenarios, projecting a range of urban and agricultural reliability into the future. Reliability in this instance is defined as the percentage of years in which demand is sufficiently met by supply. Reliability across a range of futures within the San Joaquin Valley can be presented as:

(i) For the San Joaquin River Hydrologic Region, as defined in the California

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Water Plan:

(I) Urban supply reliability ranges between 90 and 100 percent, with a mean reliability across futures in the high 90<sup>th</sup> percentile; and

(II) Agricultural supply reliability ranges between 70 and 100 percent, with a mean reliability across futures in the mid-90<sup>th</sup> percentile.

(ii) For the Tulare Lake Hydrologic Region, as defined in the California Water Plan:

(I) Urban supply reliability ranges between 70 and 100 percent, with a mean reliability across futures in the mid-90<sup>th</sup> percentile; and

(II) Agricultural supply reliability ranges between 20 and 100 percent, with a mean reliability across futures in the low 70<sup>th</sup> percentile.

(16) Since the issuance of the biological opinions, recent studies have raised questions about the benefits to endangered salmonid populations from water pumping restrictions, including:

Commented [A2]: Agencies are assessing this finding.

(A) Expert panel reviews have concluded that instantaneous water velocities in the tidal Delta affect juvenile salmonids, not “tidally average” flows, as previously assumed. Based on instantaneous water velocity modeling, water exports have a much smaller area of effect than was previously believed;

(B) Tagging studies conducted since 1993 (representing more than 28 million fish) demonstrate that the proportion of Sacramento Basin origin Chinook salmon entrained into the pumping facilities (including pre-screen losses) are on average less than 1/10 of 1%; and

(C) Telemetry studies of Sacramento Basin and San Joaquin Basin origin juvenile Chinook salmon have not demonstrated any significant adverse effect from water exports on fish survival.

(17) Data of pumping activities at the Central Valley Project and State Water Project delta pumps identifies that, on average from Water Year 2009 to Water Year 2014, pumping activity takes 893 ΔDelta smelt annually with an authorized take level of 5,003 ΔDelta smelt annually according to the biological opinion issued December 15, 2008.

(18) It is worth exploring whether there is a way to implement the biological opinions that would preserve the protections afforded listed fish and simultaneously increase water deliveries to the Central Valley Project and State Water Project without weakening environmental laws or protections.

(19) In 2014, better information exists than was known in 2008 concerning conditions and operations that may or may not lead to high salvage events that jeopardize the fish populations, and what alternative management actions can be taken to avoid jeopardy.

(20) Alternative management strategies, such as trapping and barging juvenile salmon through the Delta, removing non-native species, enhancing habitat, and monitoring fish movement and location in real-time can contribute significantly to protecting and recovering these endangered fish species, and at potentially lower costs to water supplies.

(21) Resolution of fundamental policy questions concerning the extent to which

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application of the Endangered Species Act affects the operation of the Central Valley Project and State Water Project is the responsibility of Congress.

### SEC. 3. DEFINITIONS.

In this Act:

(1) DELTA.—The term “Delta” means the Sacramento-San Joaquin Delta and the Suisun Marsh, as defined in sections 12220 and 29101 of the California Public Resources Code.

(2) Export Pumping Rates.—The term “export pumping rates” means the rates of pumping at the W.C. “Bill” Jones Pumping Plant and the Harvey O. Banks Pumping Plant, in the southern Delta.

~~(3) JEOPARDY.—The term “jeopardy” means to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.~~

~~(34)~~ LISTED FISH SPECIES.—The term “listed fish species” means listed salmonid species and the Delta smelt.

~~(45)~~ LISTED SALMONID SPECIES.—The term “listed salmonid species” means natural origin steelhead, natural origin genetic spring run Chinook, and genetic winter run Chinook salmon.

~~(5) NEGATIVE IMPACT ON THE LONG-TERM SURVIVAL.—The term “negative impact on the long-term survival” means to reduce appreciably the likelihood of the survival of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.~~

(6) OMR.—The term “OMR” means the Old and Middle River in the Delta.

(7) OMR FLOW OF -5000 CFS.—The term “OMR flow of -5000 cfs” means Old and Middle River flow of negative 5,000 cubic feet per second as measured by—

(A) the smelt biological opinion; and

(B) the salmonid biological opinion.

(8) SALMONID BIOLOGICAL OPINION.—The term “salmonid biological opinion” means the biological opinion issued by the National Marine Fisheries Service on June 4, 2009.

(9) SMELT BIOLOGICAL OPINION.—The term “smelt biological opinion” means the biological opinion on the Long-Term Operational Criteria and Plan for coordination of the Central Valley Project and State Water Project issued by the United States Fish and Wildlife Service on December 15, 2008.

(10) STATE.—The term “State” means the State of California.

## TITLE I—ADJUSTING DELTA SMELT MANAGEMENT BASED ON INCREASED REAL-TIME MONITORING AND UPDATED SCIENCE



SEC. 101. DEFINITIONS.

In this title:

(1) DIRECTOR.—The term “Director” means the Director of the United States Fish and Wildlife Service.

(2) DELTA SMELT.—The term “~~d~~Delta smelt” means the fish species with the scientific name *Hypomesus transpacificus*.

(3) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

SEC. 102. REVISE INCIDENTAL TAKE LEVEL  
CALCULATION FOR DELTA SMELT TO REFLECT NEW  
SCIENCE.

No later than October 1, 2015, and at least every five years thereafter, the Director of Fish and Wildlife Service, in cooperation with other federal, state, and local agencies, shall use the best scientific and commercial data available to complete a review and, if warranted, a modification of the incidental take level in the ~~2008 delta~~ smelt biological opinion that takes into account, among other considerations,—

- (a) salvage information collected since at least 1993; available over at least 18 years;
- (b) updated or more recently developed statistical models;
- (c) updated scientific and commercial data; and
- (d) the most recent information regarding the environmental factors driving ~~d~~Delta smelt salvage.

SEC. 103. FACTORING INCREASED REAL-TIME  
MONITORING AND UPDATED SCIENCE INTO DELTA  
SMELT MANAGEMENT.

(a) In General.—The reasonable and prudent alternative described in the ~~2008 delta~~ smelt biological opinion, ~~as amended~~, and any successor opinions, shall be implemented consistent with current best scientific and commercial data available, ~~and implementation shall be adjusted accordingly as new scientific and commercial data are developed.~~

(b) Increased Monitoring to Inform Real-time Operations.— ~~Contingent upon funding,~~ ~~The~~ Secretary shall conduct additional surveys, on an annual basis at the appropriate time of the year based on environmental conditions, in collaboration with other ~~d~~Delta science interests.

- (1) In implementing this section, after seeking public input, the Secretary shall —

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(A) use the most appropriate survey methods for the detection of ~~Δ~~Delta smelt to determine the extent that adult ~~Δ~~Delta smelt are distributed in relation to certain levels of turbidity, or other environmental factors that may influence salvage rate; and

(B) use results from appropriate survey methods for the detection of ~~Δ~~Delta smelt to determine how the Central Valley Project and State Water Project may be operated more efficiently to minimize salvage while maximizing export pumping rates of water export without causing a negative impact on the long-term survival of the Delta smelt.

(2) During the period beginning on December 1, 2014 and ending March 31, 2015, and in each successive December through March period, if suspended sediment loads enter the Delta from the Sacramento River and the suspended sediment loads appear likely to raise turbidity levels in Old River north of the export pumps from values below 12 Nephelometric Turbidity Units (NTU) to values above 12 NTU, the Secretary shall—

(A) conduct daily monitoring using appropriate survey methods at locations including, but not limited to, the vicinity of Station 902 to determine the extent that adult Delta smelt are moving with turbidity toward the export pumps; and

(B) use results from the monitoring surveys referenced in paragraph (A) at locations including, but not limited to, the vicinity of Station 902 to determine how increased trawling can inform daily real-time Central Valley Project and State Water Project operations to minimize salvage while maximizing export pumping rates of water export without causing a negative impact on the long-term survival of the Delta smelt.

(c) Periodic Review of Monitoring.—Within twelve months of the date of enactment of this title, and at least once every 5 years thereafter, or sooner if the Secretary determines it is appropriate, the Secretary shall—

(1) evaluate whether the monitoring program under subsection (b), combined with other monitoring programs for the Delta, is providing sufficient data to inform Central Valley Project and State Water Project operations to minimize salvage while maximizing export pumping rates of water export without causing a negative impact on the long-term survival of the Delta smelt; and

(2) determine whether the monitoring efforts should be changed in the short- or long-term to provide more useful data.

(d) Delta Smelt Distribution Study.—

(1) IN GENERAL.— No later than January 1, 2016, in collaboration with the California Department of Fish and Wildlife, the California Department of Water Resources, public water agencies, and other interested entities,, shall implement new targeted sampling

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and monitoring specifically designed to understand ~~d~~Delta smelt abundance, distribution, and the types of habitat occupied by ~~d~~Delta smelt during all life stages.

(2) SAMPLING.—The Delta smelt distribution study shall, at a minimum—

(A) include recording water quality and tidal data;

(B) be designed to understand ~~d~~Delta smelt abundance, distribution, habitat use, and movements throughout the ~~Bay~~ Delta, Suisun Marsh, and other areas occupied by the Delta smelt during all seasons;

(C) consider areas not routinely sampled by existing monitoring programs, including wetland channels, near-shore water, depths below 35 feet, and shallow-water; and

(D) use the most biologically appropriate survey methods, including sampling gear, best suited to collect the most accurate data for the type of sampling or monitoring.

(e) Scientifically supported implementation of Old and Middle River flow requirements.—In implementing the provisions of the smelt biological opinion, or any successor biological opinion, ~~or pertaining to management of~~ reverse flow in the Old and Middle Rivers, the Secretary shall—

(1) consider the relevant provisions of the biological opinion or any successor biological opinion;

(2) manage reverse flow in Old and Middle Rivers as prescribed by the smelt biological opinion, or any successor biological opinion, to minimize water supply reductions for the Central Valley Project and the State Water Project;

~~(3) document in writing any significant facts about real-time conditions relevant to the determinations of reverse OMR flow rates less negative than -5000 cubic feet per second, including—~~

(A) ~~the findings in paragraph (3);~~

whether continued project operations over the remainder of the water year would exceed the incidental take level;

(~~E~~B) the potential effects of entrainment on subsequent smelt abundance, including consideration of the distribution of the population throughout the Delta,

(~~D~~C) the water temperature,

(~~E~~D) other factors relevant to the determination; and

(~~F~~E) whether any alternative measures could have a lesser water supply impact.

(~~5~~4) for any subsequent biological opinion, make the showing required in

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paragraph (3) for any determination to manage OMR reverse flow at rates less negative than the upper limit in the biological opinion if the upper limit in the biological opinion is more negative than -5000 cubic feet per second.

(f) Memorandum of Understanding. No later than December 1, 2014, the Commissioner and the Director will execute a Memorandum of Understanding (MOU) to ensure that the smelt biological opinion is implemented in a manner that minimizes water supply losses while complying with applicable laws and regulations. If that MOU alters any procedures set out in the biological opinion, there will be no need to reinitiate consultation if those changes do not have an adverse effect on listed species and the implementation of the MOU would not be a major change to implementation of the biological opinion. Any change to procedures that does not create a new adverse effect to listed species will not alter application of the take exemption in the incidental take statement in the biological opinion under the Endangered Species Act, section 7(o)(2).

(g) Calculation of Reverse Flow in OMR.-Within 90 days of the enactment of this title, the Secretary is directed, in consultation with the California Department of Water Resources to revise the method used to calculate reverse flow in Old and Middle Rivers for implementation of the reasonable and prudent alternatives in the smelt biological opinion and the salmonid biological opinion, and any succeeding biological opinions, for the purpose of increasing Central Valley Project and State Water Project water supplies. The method of calculating reverse flow in Old and Middle Rivers shall be reevaluated not less than every five years thereafter to achieve maximum export pumping rates within limits established by the smelt biological opinion, the salmonid biological opinion, and any succeeding biological opinions.

## SEC. 201. DEFINITIONS.

In this title:

(1) ASSISTANT ADMINISTRATOR.—The term “Assistant Administrator” means the Assistant Administrator of NOAA Fisheries.

(2) SECRETARY.—The term “Secretary” means the Secretary of Commerce.

## SEC. 202. REQUIRED SCIENTIFIC STUDIES.

(a) Trap and Barge Pilot Project to Increase Survivals Through the Delta.—The Assistant Administrator and the Commissioner shall, in collaboration with the U.S. Fish and Wildlife Service, the California Department of Fish and Wildlife and other interested parties, design, permit, implement and evaluate a pilot program to test the efficacy of an experimental trap and barge program to improve survival of juvenile salmonids emigrating from the San Joaquin watershed through the Delta, as further described below.

(1) Within 30 days of enactment, the Assistant Administrator shall convene a working group of the relevant agencies and other interested parties through which to develop and execute a plan for the design, budgeting, implementation and evaluation of such a pilot program, utilizing existing expertise on such trap and barge programs as may be available. Such plan shall detail a schedule and budget for the program, and identify the responsible

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parties for each element of the program.

(2) The Assistant Administrator shall provide an opportunity for public review and comment on the pilot program and also simultaneously seek an expeditious independent peer review of the program to improve its rigor and likelihood of success.

(3) Upon completion of (2), above, the Assistant Administrator shall complete the necessary design and evaluations of the pilot program and seek such ~~authorizations and permits~~ or other regulatory authorizations as may be required under federal law for its prompt implementation and evaluation by the Assistant Administrator, the Commissioner or such other parties as they determine most suitable.

~~(4) Subject to the availability of funding,~~ The Assistant Administrator and the Commissioner shall seek to commence implementation of the pilot program in 2015 or as soon thereafter as is possible, and shall conduct such pilot for such period of time as needed to evaluate the efficacy of the program to improve survival~~s~~ across a range of environmental conditions.

(5) The Assistant Administrator and the Commissioner shall jointly report annually to the Senate Environment and Public Works Committee and the House Committee on Natural Resources their progress in implementing this section, estimated survival rates through the Delta for both juvenile salmonids that were barged through the Delta and those that were not barged, and if survival rates are significantly higher for barged fish as compared to other outmigrating smolts, the Assistant Administrator's and Commissioner's recommendations regarding broadening the pilot program and any relevant recommendations pursuant to section 203.

(b) Tagging studies.

(1) IN GENERAL.—The Assistant Administrator, in collaboration with other Delta science partners, shall implement tagging studies, including acoustic telemetry and PIT tagging studies as appropriate, wherein habitat, predators, flow conditions, or other factors are experimentally altered and the behavior and survival of tagged juvenile salmonids are observed. Studies may also be conducted to aid in the understanding of Chinook salmon and steelhead abundance, distribution, and survival.

(2) SAMPLING.—The sampling—

(A) shall include recording water quality and tidal data;

(B) will be designed to aid in the understanding of salmonid abundance, distribution, and movements throughout the Bay Delta, including estimates of through Delta survival from Knights Landing or from Mossdale to Chipps Island; and

(C) will supplement, not supplant, ongoing acoustic tag and coded wire survival studies in the San Joaquin and Sacramento Rivers which the Assistant Administrator determines are crucial for trend monitoring.

**SEC. 203. PROCESS FOR ENSURING SALMONID  
MANAGEMENT IS RESPONSIVE TO NEW SCIENCE.**

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(a) General directive. The reasonable and prudent alternative described in the salmonid biological opinion allows for and anticipates adjustments in operating criteria to reflect the best scientific and commercial data currently available, and authorizes efforts to test and evaluate improvements in operations that will meet applicable regulatory requirements and enable improvements in water supply reliability. The Commissioner and the Assistant Administrator are hereby directed to utilize these authorities fully as described below.

(b) Annual reviews of certain operating criteria. No later than December 31, 2015, and at least annually thereafter,

(1) The Commissioner, in consultation with and with the assistance of the Assistant Administrator shall ~~commence annual efforts to~~ examine and identify adjustments to the initiation of Action IV.2.3 pertaining to negative OMR flows, subject to paragraph (5).

(2) The Commissioner, in consultation with and with the assistance of the Assistant Administrator, shall examine and identify adjustments in the timing, triggers or other operational details relating to the implementation of pumping restrictions in Action IV.2.1 pertaining to the inflow to export requirements, subject to paragraph (5).

(3) Pursuant to the consultation and assessments carried out under paragraphs (1) and (2) of this subsection, the Commissioner shall make recommendations to the Assistant Administrator on adjustments that, in the exercise of the adaptive management provisions of the salmonid biological opinion, ~~can improve water supplies will reduce water supply impacts of the salmonid biological opinion on the Central Valley Project and the California State Water Project~~ and are consistent with the requirements of applicable law and as further described in subsection (c).

(4) The Commissioner shall implement those adjustments for which the conditions under subsection (c) are met.

(5) The Assistant Administrator and the Commissioner shall review and identify adjustments to water supply restrictions in any successor biological opinion to the salmonid biological opinion, applying the provisions of this section to those water supply restrictions where there are references to Actions IV.2.1 and IV.2.3.

(c) Adjustments that shall be implemented. ~~In receiving reviewing~~ the recommendations under subsection (b), the Assistant Administrator shall evaluate the effects of the recommended adjustments on listed species and shall adjustments for which:

(1) the net effect on listed species is equivalent to those of the underlying criteria ~~in the salmonid biological opinion~~, taking into account whatever actions or measures may be implemented in conjunction with the adjustments to mitigate its effects; and

(2) the effects of the adjustment fall within the incidental take authorizations.

(d) ~~Taking into account offsetting species survival benefits from other measures.~~

When examining ~~and identifying~~ opportunities to offset the potential adverse effect of adjustments to operating criteria, the Commissioner and the Assistant Administrator shall take into account the potential ~~species salmonid~~ survival improvements that are likely to result from other measures which, if implemented in conjunction with the adjustments, would offset ~~the~~ adverse effects, ~~if any~~, of the adjustments. When ~~considering evaluating~~ offsetting measures, the Commissioner and the Assistant Administrator shall consider the

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type, timing and nature of the adverse effects, if any, to specific species and ensure that the measures provide equivalent overall benefits to the listed species in the aggregate, as long as the change will not cause a negative impact on the long-term survival of a listed salmonid species.

~~(1) The offsetting measures could include actions implemented with the support of a substantial contribution from water districts that would benefit from the adjustments.~~

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- (e) Framework for examining opportunities to minimize or offset the potential adverse effect of adjustments to operating criteria.—Not later than December 31, 2015, and every five years thereafter, the Assistant Administrator shall, in collaboration with the Director of the California Department of Fish and Wildlife, based on the best scientific and commercial data available and for each listed salmonid species, issue estimates of the increase in through-Delta survival the Secretary expects to be achieved—

(1) ~~through with~~ restrictions on export ~~pumping rates~~ restrictions as specified by Action IV.2.3 as compared to limiting OMR flow to a fixed rate of -5000 cubic feet per second within the time period Action IV.2.3 is applicable, based on a given rate of San Joaquin River inflow to the Delta and holding other relevant factors constant;

(2) ~~through with~~ San Joaquin River inflow to export restrictions on export pumping rates specified within Action IV.2.1 as compared to the ~~export~~ restrictions in the April/May period imposed by the State Water Resources Control Board decision D-1641, based on a given rate of San Joaquin River inflow to the Delta and holding other relevant factors constant;

(3) through a trap and barge program based on the experience of other systems to the extent they are comparable, and the study described in section 202, as that information becomes available;

(4) through physical habitat restoration improvements;

(5) through predation control programs;

(6) through the installation of temporary barriers, the management of Cross Channel Gates operations, and other projects affecting flow in the Delta;

(7) ~~through by~~ salvaging fish that may be entrained near the entrance to Clifton Court Forebay; and

(8) ~~through by~~ any other management measures that may provide equivalent or better protections benefits for listed species ~~with improvements to water supplies while~~ maximizing export pumping rates without causing a negative impact on the long-term survival of a listed salmonid species.

- (f) Survival estimates ~~to be quantitative to the maximum extent feasible~~.

(1) ~~To the maximum extent feasible, the~~ Assistant Administrator shall make ~~these~~ quantitative estimates of survival, and determinations quantitatively to the maximum extent feasible, such as a range of percentage increases in through-Delta survival that could result from the management measures, and if the scientific information is lacking for quantitative estimates, shall do so on qualitative terms based upon the best available science.



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(2) If the Assistant Administrator provides qualitative survival estimates for a species resulting from one or more management measures, the Secretary shall, to the maximum extent feasible, rank the management measures described in subsection (e) in terms of their most likely expected contribution to increased through-Delta survival relative to the other measures.

(3) If at the time the Assistant Administrator conducts the analysis under subsection (b), the Secretary has not issued an the estimates of increased through-Delta survival benefits from different management measures pursuant to subsection (e), the Secretary shall compare the protections benefits to the species from different management measures based on the best scientific and commercial data available at the time.

(g) Comparison of adverse consequences for alternative management measures of equal protection for a species. benefit to the salmon.

(1) For the purposes of this subsection—

(A) The alternative management measure or combination of alternative management measures identified in paragraph (2) shall be known as the “equivalent alternative measure.”

(B) The existing measure or measures identified in subparagraphs (2)(A),(B),(C), or (D) shall be known as the “equivalent existing measure.”

(C) An “equivalent increase in through-Delta survival rates for listed salmonid species” shall mean an increase in through-Delta survival rates that is equivalent when considering the change in through-Delta survival rates for the listed salmonid species in the aggregate, and not the same change for each individual species, as long as the change in survival rates will not cause a negative impact on the long-term survival of a listed salmonid species.

(2) As part of the reviews of operating criteria pursuant to subsection (b), the Assistant Administrator shall determine whether any alternative management measures or combination of alternative management measures listed in subsection (e)(3) through (8) would provide an increase in through-Delta survival rates for listed salmonid species that is equivalent to the increase in through-Delta survival rates for listed salmonid species from the following:

(A) through restrictions on export pumping rates with export restrictions as specified by Action IV.2.3, as compared to limiting OMR flow to a fixed rate of -5000 cubic feet per second within the time period Action IV.2.3 is applicable;

(B) through restrictions on export pumping rates with export restrictions as specified by Action IV.2.3, as compared to a modification of Action IV.2.3 that would provide additional water supplies, other than that described in subparagraph (A);

(C) through with San Joaquin River inflow to export restrictions on export pumping rates specified within Action IV.2.1, as compared to the export restrictions in the April/May period imposed by the State Water Resources Control Board decision D-1641, or

(D) through with San Joaquin River inflow to export restrictions on export pumping rates specified within Action IV.2.1, as compared to a modification of Action IV.2.1



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that would reduce water supply impacts of the salmonid biological opinion on the Central Valley Project and the California State Water Project, other than that described in subparagraph (C).

(3) If the Assistant Administrator identifies an equivalent alternative measure pursuant to paragraph (2), the Assistant Administrator shall determine whether

(A) it is technically feasible and within federal jurisdiction to implement the equivalent alternative measure, and

(B) the adverse consequences of doing so are less than the adverse consequences of the equivalent existing measure, including a concise evaluation of the adverse consequences to other affected interests.

(4) If the Assistant Administrator makes the findings in subparagraph (3)(A) and (B), the Assistant Administrator and the Commissioner shall adjust the operating criteria in the salmonid biological opinion pursuant to this subsection to implement the equivalent alternative measure in place of the equivalent existing measure in order to increase export rates of pumping water supplies to the greatest extent possible while maintaining a net combined effect of equivalent through-Delta survival rates for the listed salmonid species.

(h) Tracking adverse effects beyond the range of effects accounted for in the salmonid biological opinion and coordinated operation with the smelt biological opinion.

(1) Among the adjustments to the operational criteria considered through the adaptive management process under this section, the Assistant Administrator and the Commissioner shall

(A) Evaluate the effects on listed salmonid species and water supply of the potential adjustment to operational criteria described in subparagraph (B); and

(B) Consider requiring that before some or all of the provisions of Actions IV.2.1. or IV.2.3 are imposed in any specific instance, the Assistant Administrator show that the implementation of these provisions in that specific instance is necessary to avoid a negative impact on the long-term survival of a listed salmonid species, additional adverse effects upon listed salmonid species beyond the range of effects analyzed and accounted for in the salmonid biological opinion

(2) The Assistant Administrator, the Director and the Commissioner, in coordination with State officials as appropriate, shall establish operational criteria to coordinate management of OMR flows under the smelt and salmonid biological opinions, in order to take advantage of opportunities to provide additional water supplies from the coordinated implementation of the biological opinions.

(i) Real-Time Monitoring and Management. The Assistant Administrator and the Commissioner shall, through the NMFS adaptive management salmonid biological opinion provisions, analyze whether date-certain triggers that limit OMR reverse flow to -5000 cubic feet per second could be adjusted to instead use real-time migration information on salmonids. If the analysis shows that the use of real-time information to trigger OMR flow limitations would improve water supply without causing significant adverse effects to Winter-run Chinook salmon, then such real-time management triggers shall be implemented.

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**SEC. 204. PILOT PROGRAM TO PROTECT NATIVE  
ANADROMOUS FISH IN THE STANISLAUS RIVER.**

(a) Establishment of Non-native Predator Fish Removal Program. The Assistant Administrator, in consultation with the United States Fish and Wildlife Service and the California Department of Fish and Wildlife, shall develop and conduct a pilot non-native predator fish removal program to remove non-native striped bass, smallmouth bass, largemouth bass, black bass, and other non-native predator fishes in and around the Bay Delta, including the Stanislaus River, contingent upon funding. The pilot program shall--

(1) be scientifically based;

(2) include methods to quantify the number and size of predator fishes removed each year, the impact of such removal on the overall abundance of predator fishes, and the impact of such removal on the populations of juvenile anadromous fish found in the Stanislaus River and elsewhere by, among other things, evaluating the number of juvenile anadromous fish that migrate past the rotary screw trap located at Caswell;

(3) among other methods, use wire fyke trapping, portable resistance board weirs, and boat electrofishing, which are among the most effective predator collection techniques that minimize effects to native anadromous fish;

(4) be developed, including the application for all necessary scientific research and species enhancement permits under section 10(a)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)), for the performance of the pilot program, not later than 6 months after the date of the enactment of this Act;

(5) be implemented on the first business day of the calendar year following the issuance of all necessary scientific research, species enhancement permits, and funding needed to begin the pilot program; and

(6) be implemented for a period of seven consecutive calendar years.

(b) Management. The Assistant Administrator is authorized and encouraged to enter into agreements with interested local water districts to jointly develop, implement and evaluate this pilot program. Such parties shall work collaboratively to ensure the performance of the pilot program, and shall discuss and agree upon, among other things, changes in the structure, management, personnel, techniques, strategy, data collection, reporting and conduct of the pilot program.

(c) Conduct.—

(1) IN GENERAL.—By agreement between the Assistant Administrator and the participating districts, the pilot program may be conducted by their own personnel, qualified private contractors hired by the districts, personnel of, on loan to, or otherwise assigned to NOAA Fisheries, or a combination thereof.

(2) PARTICIPATION BY NOAA FISHERIES.—In the event the districts elect to conduct the program using their own personnel or qualified private contractors hired by them, the Commissioner has the option to assign an employee of, on loan to, or otherwise assigned to NOAA Fisheries, to be present for all activities performed in the field. Such presence shall

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ensure compliance with the agreed upon elements specified in subsection (b). The districts shall pay 100 percent of the cost of such participation as specified in subsection (d).

(3) TIMING OF ELECTION.—The districts shall notify the Assistant Administrator of their election on or before October 15 of each calendar year of the pilot program, which election shall apply to the work performed in the subsequent calendar year.

(d) Funding.—

(1) ANNUAL FUNDING.—The Commissioner, the Assistant Administrator, and the participating districts shall develop a budget and funding plan for the pilot project that will allocate costs appropriately amongst the participating entities. On or before December 1 of each year of the pilot program, the Commissioner shall submit to the districts an estimate of the cost to be incurred by the Bureau of Reclamation in the following calendar year, if any, including the cost of any data collection and posting under subsection (e). If an amount equal to the estimate is not provided to the Assistant Administrator by the districts on or before December 31 of each year, (a) NOAA Fisheries shall have no obligation to conduct the pilot program activities otherwise scheduled, and (b) the districts shall be prohibited from conducting any aspect of the pilot program, until full payment is made by the districts.

(2) ACCOUNTING.—On or before September 1 of each calendar year, the Assistant Administrator shall provide an accounting of the prior calendar year's expenses to the participating entities. If the estimate paid by the districts was less than the actual costs incurred by NOAA Fisheries, the districts shall have until September 30 of that calendar year to pay the difference to the fund identified by the Assistant Administrator in subsection (d)(1), or NOAA Fisheries shall have no obligation to conduct the pilot program activities otherwise scheduled. If the estimate paid by the districts was greater than the actual costs incurred by NOAA Fisheries, then a credit shall be provided to the districts, which shall be deducted from the estimate payment the districts must make for the work performed by NOAA Fisheries, if any, in the next calendar year.

(e) Reporting and Evaluation.—

(1) IN GENERAL.—On or before the 15th day of each month, the Assistant Administrator shall post on the website of NOAA Fisheries a tabular summary of the raw data collected in the prior month.

(2) REPORT.—On or before June 30 of the calendar year following the completion of the program, the Assistant Administrator and districts shall jointly submit a report for peer review that—

(A) discusses the findings and conclusions of the pilot program;

(B) synthesizes the data collected under paragraph (1); and

(C) makes recommendations for further study and action.

(f) Permits Process.—

(1) Not later than one year after filing of an application by the Assistant Administrator and the districts, the Secretary of the Interior, the Secretary of Commerce, or both, as appropriate, shall issue all necessary scientific research and species enhancement permits

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under section 10(a)(1) of the Endangered Species Act (16 U.S.C. 153(9)(a)(1)), for the performance of the pilot program.

(2) All permits issued shall be in the name of NOAA Fisheries and the participating districts.

(3) Districts may delegate the authority to administer the permit authority to any qualified private contractor retained in accordance with subsection (c).

(g) Emergency Environmental Reviews.—To expedite this environmentally beneficial program for the conservation of threatened and endangered species, the Secretary of the Interior shall consult with the Council on Environmental Quality in accordance with Section 1506.11 of title 40, Code of Federal Regulations (including successor regulations) to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 for this section.

(h) Definitions.—For the purposes of this section:

(1) COMMISSIONER.—The term ‘Commissioner’ means the Commissioner of the Bureau of Reclamation.

(2) DISTRICTS.—The term ‘districts’ means the Oakdale Irrigation District and the South San Joaquin Irrigation District.

(3) PILOT PROGRAM.—The term ‘program’ means the pilot non-native predator removal program established under this section.

(i) Sunset.—The authorities provided under this section shall expire seven years after the implementation of the pilot program.

**SEC. 205. CALFED INVASIVE SPECIES PILOT PROJECTS  
IN THE SACRAMENTO-SAN JOAQUIN BAY DELTA AND  
ITS TRIBUTARIES.**

(a) FINDINGS.—Congress finds that—

(1) The Sacramento-San Joaquin Bay Delta and its Tributaries-

(A) is one of the largest and most diverse estuaries in the United States,

(B) is a natural treasure and a vital link in California’s water system, and

(C) has native biodiversity important to the ecological and economic systems of California, including water deliveries to agriculture, municipalities and to the environment and fisheries industries, and

(D) has river tributaries important for rearing of salmon and steelhead smolts which experience a high level of predation from non-native species.

(2) Past, present and future introductions of invasive species are and will be a major factor in the decline of native pelagic and anadromous endangered or threatened species in the Sacramento–San Joaquin Bay Delta and its tributaries.

(3) More than 250 nonnative aquatic and plant species have been introduced into the Delta and its tributaries; of these, at least 185 species have become established and have altered the Sacramento-San Joaquin Bay Delta watershed’s ecosystem.

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(4) The Bay Delta Conservation Plan, the Recovery Plan for the Evolutionarily Significant Units of Sacramento River Winter-run Chinook Salmon and Central Valley Spring-run Chinook Salmon and the Distinct Population Segment of the Central Valley Steelhead, the Recovery Plan for the Sacramento-San Joaquin Delta Native Fishes, and the multiple 5 year reviews of those plans all highlight that introduced nonnative invasive species are a significant factor in the decline of native fish species. These nonnative species, which include invasive aquatic vegetation, predators, and competitors, directly or indirectly cause biological stress for pelagic and anadromous endangered or threatened fish species in the Sacramento-San Joaquin Bay-Delta and its tributaries.

(5) If threats by nonnative species to native fish species are not addressed, there is a probability that native species of the Sacramento-San Joaquin Bay-Delta watershed's pelagic and anadromous community will go extinct.

(6) The CALFED legislation (Public Law 108-361) authorized a program to prevent, control, and eradicate invasive species, but it has not been implemented to date.

(7) A focused pilot program needs to be conducted within the Delta and river tributaries to reduce threats to native listed species by nonnative species. Reducing nonnative stressors on native listed species will contribute to both native listed species recovery and lowering the impact on downstream water users as those native listed species recover.

(b) PILOT PROJECTS TO IMPLEMENT CALFED INVASIVE SPECIES PROGRAM.

(1) Not later than January 1, 2016, the Secretary of the Interior, in collaboration with the Secretary of Commerce and the Director of the California Department of Fish and Wildlife, shall begin pilot projects to implement the invasive species program, including prevention, control and eradication authorized pursuant to Section 103(d)(6)(A)(iv) of Public Law 108-361. The pilot projects shall:

(A) seek to reduce invasive aquatic vegetation, predators, and other competitors which are major factors in the decline of native listed pelagic and anadromous species that occupy the Sacramento and San Joaquin Rivers and their tributaries and the Sacramento-San Joaquin Bay-Delta; and

(B) address how to remove, reduce, or control the effects of species including: Asiatic clams, silversides, gobies, Brazilian water weed, largemouth bass, smallmouth bass, striped bass, crappie, bluegill, white and channel catfish, and brown bullheads.

(2) The Secretary of the Interior's efforts shall consist of the following phases:

(A) Phase 1. The Secretary of the Interior shall convene a panel of experts, including experts recommended by the State of California, to:

- (i) Identify the non-native species having the greatest impact on the viability of native pelagic and anadromous native listed species; and
- (ii) Identify the non-native species for which actions to reduce or control the population is determined to be possible; and
- (iii) Design a study to reduce the non-native species identified in clauses (i) and (ii) and prepare a cost estimate to implement this study.

(B) Phase 2. The Secretary of the Interior shall test the general viability of nonnative reduction methods, including either direct predator removal or alteration of channel

**Commented [A3]:** Awaiting feedback from the agencies on whether the experts in an existing predation workshop would address the items outlined in clauses (i) through (iii) of subparagraph (A) in the proposed text.

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conditions, or some combination thereof, through pilot projects at multiple sites in addition to the projects on the Stanislaus River pursuant to Section 204, including known hotspots of predator aggregation or activity, such as:

- (i) Clifton Court Forebay,
- (ii) Central Valley Project intakes,
- (iii) Head of Old River,
- (iv) Georgiana Slough,
- (v) Old and Middle Rivers,
- (vi) Franks Tract,
- (vii) Paintersville Bridge,
- (viii) individual river tributaries important for wild populations of anadromous species listed as threatened or endangered under the Endangered Species Act of 1973,
- (ix) Human-made submerged structures, and
- (x) Salvage release sites.

(C) Phase 3. If it is feasible to do so, the Secretary of the Interior shall implement nonnative reduction methods at a larger number of sites, incorporating information learned during the first and second phase.

(3) The Secretary of the Interior shall collect data associated with the implementation of the projects above, and shall specifically collect data on the impact on

(A) pelagic and anadromous species listed as threatened or endangered under the Endangered Species Act of 1973,

(B) water quality, and

(C) water supply.

(4) After assessing the data described in subparagraph (2), the Secretary of the Interior, in collaboration with the Secretary of Commerce and the Director of the California Department of Fish and Wildlife, shall, if appropriate, annually recommend revisions to the reasonable and prudent alternatives contained in the salmonid biological opinion and the smelt biological opinion, or other administrative federal requirements governing the operation of the Central Valley Project and the State Water Project, that are likely to produce additional fishery, water quality, and water supply benefits.

(c) IMPLEMENTATION. The Secretary of the Interior shall implement the CALFED program described in subpart (b) for at least a period of seven consecutive years beginning on the date of implementation.

(d) REPORTING REQUIREMENTS. The Secretary of the Interior shall provide reports to the Senate Committee on Environment and Public Works and the House Committee on Natural Resources on the following:

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(1) No later than January 1, 2016, a description of the projects described in subpart (b), including the application for all necessary scientific research and species enhancement permits under section 10(a) (1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)), and for the performance of the CALFED invasive species Program.

(2) Upon the completion of Phase 1 as described in subsection (b)(1)(A), a report describing its implementation and cost effectiveness.

(3) Two years after the project begins, a report describing the progress of the eradication of the nonnative species in the Sacramento-San Joaquin Bay-Delta and its tributaries and how such efforts have helped the Recovery Plans for endangered and threatened Anadromous and Pelagic Species in the Sacramento-San Joaquin Bay-Delta watershed and the associated cost effectiveness of each control measure.

(4) After the pilot projects are complete, a report describing the results of the program, including recommendations on whether the program should be continued, how the program may be taken to full scale in the most cost effective manner, and how a mitigation program for the Central Valley Project allowable under section 10(a)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)) could be implemented.

(e) EMERGENCY ENVIRONMENTAL REVIEWS. To expedite this environmentally beneficial program for the conservation of threatened and endangered species, the Secretary of the Interior shall consult with the Council on Environmental Quality in accordance with section 1506.11 of title 40, Code of Federal Regulations (including successor regulations) to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 for this program.

## **SEC. 206. MARK FISHERY AND HARVEST MANAGEMENT.**

To minimize the impact of harvest and project operations on salmonids, contribute to recovery of stocks of endangered or threatened species, improve management of fish stocks of both hatchery and natural origins, and to minimize risk of a natural origin fall Chinook listing under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), the Assistant Administrator shall

(1) in partnership with the Director of the California Department of Fish and Wildlife and persons responsible for funding Central Valley hatcheries, convene an independent science panel within 60 days of enactment of this Act to follow up on the 2012 California Hatchery Scientific Review Group's recommendations by providing an assessment of costs and benefits associated with marking, with tagging, and with a program that combines in some way marking and tagging Central Valley hatchery produced fall Chinook. The Assistant Administrator shall ensure that the independent science panel—

(A) Includes an appropriate number of scientific experts as determined and appointed by the Assistant Administrator, and an equal number of scientific experts selected by entities responsible for funding California salmon mitigation hatcheries;

(B) Considers and gives equal weight to both inland and ocean monitoring and management needs, including harvest.

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(C) Completes the review by December 31, 2015.

(2) assess and implement harvest management strategies by October 1, 2018 to provide better protection for sensitive Chinook stocks while still allowing for harvest of hatchery fall Chinook.

**SEC. 207. NEW ACTIONS TO BENEFIT CENTRAL VALLEY SALMONIDS.**

Not later than March 1, 2016, under similar terms and conditions as successful United States Fish and Wildlife Service programs on Clear Creek and Battle Creek, the Director, in collaboration with the Director of the California Department of Fish and Wildlife, the Commissioner of the Bureau of Reclamation, or both, shall issue necessary permits and otherwise facilitate the deployment of temporary in-river structures—

(1) to protect and grow natural origin spring Chinook populations by blocking access to hatchery origin fall Chinook; and

(2) to prevent hatchery origin Chinook salmon and steelhead from reaching spawning grounds where the species will compete for spawning with natural origin fish listed under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

**TITLE III—OPERATIONAL FLEXIBILITY AND DROUGHT RELIEF**

**SEC. 301. FINDINGS.**

Congress finds that—

(1) Based on the congressional findings in Sec. 2 of this Act, it is appropriate and necessary for federal agencies to exercise the maximum amount of flexibility provided to them under the applicable laws and regulations to maximize delivery of water supplies while providing the same or better levels of protection for species.

**SEC. 302. DEFINITIONS.**

In this title:

(1) **CENTRAL VALLEY PROJECT.**—The term “Central Valley Project” has the meaning given the term in section 3403 of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4707).

(2) **KLAMATH PROJECT.**—The term “Klamath Project” means the Bureau of Reclamation project in the States of California and Oregon, as authorized under the Act of June 17, 1902 (32 Stat. 388, chapter 1093).



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(3) RECLAMATION PROJECT.—The term “Reclamation Project” means a project constructed pursuant to the authorities of the reclamation laws and whose facilities are wholly or partially located in the State.

(4) SECRETARIES.—The term “Secretaries” means—

(A) the Administrator of the Environmental Protection Agency;

(B) the Secretary of Agriculture;

(C) the Secretary of Commerce; and

(D) the Secretary of the Interior.

(5) STATE WATER PROJECT.—The term “State Water Project” means the water project described by California Water Code section 11550 et seq., and operated by the California Department of Water Resources.

### SEC. 303. OPERATIONAL FLEXIBILITY IN TIMES OF DROUGHT.

(a) Water Supplies.—

(1) IN GENERAL.—In response to a declaration of a state of drought emergency by the Governor of California and for the period of time such a drought declaration remains in effect, the Secretaries shall provide the maximum quantity of water supplies practicable to Central Valley Project agricultural, municipal and industrial, and refuge service and repayment contractors, State Water Project contractors, and any other tribe, locality or municipality in the State, by approving, consistent with applicable laws (including regulations), projects and operations to provide additional water supplies as quickly as practicable based on available information to address the emergency conditions.

(2) APPLICATION.—Paragraph (1) applies to projects or operations involving the Klamath Project if the projects or operations would benefit Federal water contractors in the State.

(b) Administration.—In carrying out subsection (a), the Secretaries shall, consistent with applicable laws (including regulations)—

(1) issue all necessary permit decisions under the authority of the Secretaries not later than 30 days after the date on which the Secretaries receive a completed application from the State to place and use temporary barriers or operable gates in Delta channels to improve water quantity and quality for the State Water Project and the Central Valley Project south of Delta water contractors and other water users, on the condition that the barriers or operable gates—

(A) provide benefits for species protection and in-Delta water user water quality; and

(B) are designed so that formal consultations under section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) are not necessary;

(2) require the Director of the United States Fish and Wildlife Service and the Commissioner of Reclamation—

(A) to complete, not later than 30 days after the date on which the Director or the

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Commissioner receives a complete written request for water transfer associated with voluntarily following nonpermanent crops in the State, all requirements under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) necessary to make final permit decisions on the request; and

(B) to grant any water transfer request described in subparagraph (A) to maximize the quantity of water supplies available for nonhabitat uses, on the condition that the following and associated water transfer are in compliance with applicable Federal laws (including regulations);

(3) adopt a 1:1 inflow to export ratio, ~~for the increment of increased flow of the San Joaquin River,~~ as measured as a 3-day running average at Vernalis during the period beginning on April 1, and ending on May 31, ~~absent a determination in writing that a more restrictive inflow to export ratio is required to avoid a negative impact on the long-term survival of a listed salmonid species; provided that the a 1:1 inflow to export ratio shall apply for the increment of increased flow of the San Joaquin River~~ resulting from the voluntary ~~sale, transfers, or and exchanges~~ of water ~~from agencies with rights to divert water from the San Joaquin River or its tributaries, supplies, on the condition that a proposed transfer or exchange under this paragraph may only proceed if the Secretary of the Interior determines that the environmental effects of the proposed transfer or exchange are consistent with effects permissible under applicable law (including regulations), and provided tht~~ Delta conditions are suitable to allow movement of the ~~acquired, transfer, transferred, or exchanged~~ water through the Delta consistent with ~~the Central Valley Project's and the State Water Project's Reclamation's~~ permitted water rights; and

(4) Provide additional priority for eligible WaterSMART projects that address drought conditions including projects that—

(A) provide emergency drinking and municipal water supplies to localities in a quantity necessary to meet minimum public health and safety needs;

(B) prevent the loss of permanent crops;

(C) minimize economic losses resulting from drought conditions; or

(D) provide innovative water conservation tools and technology for agriculture and urban water use that can have immediate water supply benefits.

(c) Accelerated Project Decision and Elevation.—

(1) IN GENERAL.— On request by the Governor of the State, the heads of Federal agencies shall use the expedited procedures under this subsection to make final decisions relating to a Federal project or operation if the project's or operation's purpose is to provide relief for emergency drought conditions pursuant to subsections (a) and (b).

(2) REQUEST FOR RESOLUTION.—

(A) IN GENERAL.— On request by the Governor of the State, the head of a Federal agency referenced in paragraph (1), or the head of another Federal agency responsible for carrying out a review of a project, as applicable, the Secretary of the Interior shall convene a final project decision meeting with the heads of all relevant Federal agencies to decide whether to approve a project to provide relief for emergency drought

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conditions.

(B) MEETING.—The Secretary of the Interior shall convene a meeting requested under subparagraph (A) not later than 7 days after the date on which the meeting request is received.

(3) NOTIFICATION.—On receipt of a request for a meeting under paragraph (2), the Secretary of the Interior shall notify the heads of all relevant Federal agencies of the request, including information on the project to be reviewed and the date of the meeting.

(4) DECISION.—Not later than 10 days after the date on which a meeting is requested under paragraph (2), the head of the relevant Federal agency shall issue a final decision on the project, subject to subsection (e)(2).

(5) MEETING CONVENED BY SECRETARY.—The Secretary of the Interior may convene a final project decision meeting under this subsection at any time, at the discretion of the Secretary, regardless of whether a meeting is requested under paragraph (2).

(d) Application.—To the extent that a Federal agency, other than the agencies headed by the Secretaries, has a role in approving projects described in subsections (a) and (b), this section shall apply to those Federal agencies.

(e) Limitation.—Nothing in this section authorizes the heads of applicable Federal agencies to approve projects—

(1) that would otherwise require congressional authorization; or

(2) without following procedures required by applicable law.

(f) Drought Plan. The Secretaries of Commerce and the Interior, in consultation with appropriate State officials, shall develop a drought operations plan for [the duration of the existing drought emergency](#) that is consistent with the provisions of this section and other provisions of this Act intended to provide additional water supplies that could be of assistance during the current drought.

## SEC. 304. OPERATION OF CROSS-CHANNEL GATES.

(a) In General.—The Secretary of Commerce and the Secretary of the Interior shall jointly—

(1) authorize and implement activities to ensure that the Delta Cross Channel Gates remain open to the maximum extent practicable using findings from the United States Geological Survey on diurnal behavior of juvenal salmonids, timed to maximize the peak flood tide period and provide water supply and water quality benefits for the duration of the drought emergency declaration of the State, consistent with operational criteria and monitoring criteria developed pursuant to the Order Approving a Temporary Urgency Change in License and Permit Terms in Response to Drought Conditions of the California State Water Resources Control Board, effective January 31, 2014 (or a successor order) and other authorizations associated with it;

(2) with respect to the operation of the Delta Cross Channel Gates described in paragraph (1), collect data on the impact of that operation on—

(A) species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

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(B) water quality; and

(C) water supply;

(3) consistent with knowledge gained from activities carried out during 2014, collaborate with the California Department of Water Resources to install a deflection barrier at Georgiana Slough in coordination with Delta Cross Channel Gate diurnal operations to protect migrating salmonids;

**Commented [A4]:** Agencies are investigating the feasibility of diurnal operations.

(4) evaluate the combined salmonid survival in light of activities carried out pursuant to paragraphs (1) through (3) in deciding how to operate the Delta Cross Channel gates to enhance salmonid survival and water supply benefits; and

(5) not later than May 15, 2015, submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives a written report on the extent to which the gates are able to remain open.

(b) Recommendations.—After assessing the information collected under subsection (a), the Secretary of the Interior shall recommend revisions to the operation of the Delta Cross-Channel Gates, to the Central Valley Project, and to the State Water Project, including, if appropriate, any reasonable and prudent alternative contained in the biological opinion issued by the National Marine Fisheries Service on June 4, 2009, that are likely to produce fishery, water quality, and water supply benefits. The Secretary shall also coordinate with the State Water Resources Control Board to seek consistent direction for the operation of the Delta Cross-Channel Gates under federal and state law, including Water Right Decision 1641.

## SEC. 305. FLEXIBILITY FOR EXPORT/INFLOW RATIO.

In response to the declaration of a state of drought emergency by the Governor of California and for the period of time such a drought declaration remains in effect, the Commissioner of the Bureau of Reclamation shall continue to vary the averaging period of the Delta Export/Inflow ratio pursuant to the California State Water Resources Control Board decision D1641, approved in the March Temporary Urgency Change Order—

(1) to operate to a 35 percent Export/Inflow ratio with a 3 day averaging period on the rising limb of a Delta inflow hydrograph; and

(2) to operate to a 14 day averaging period on the falling limb of the Delta inflow hydrograph.

## SEC. 306. EMERGENCY ENVIRONMENTAL REVIEWS.

To minimize the time spent carrying out environmental reviews and to deliver water quickly that is needed to address emergency drought conditions in the State during the duration of an emergency drought declaration, the head of each applicable Federal agency shall, in carrying out this Act, consult with the Council on Environmental Quality in accordance with section 1506.11 of title 40, Code of Federal Regulations (including successor regulations), to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) during the emergency.

## SEC. 307. PRIORITIZING STATE REVOLVING FUNDS

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**DURING DROUGHTS.**

(a) In General.—This section shall apply for each of the fiscal years during which an emergency drought declaration of the State is in effect.

(b) The Administrator of the Environmental Protection Agency, in implementing the processes and programs under the State water pollution control revolving funds established under title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) and the State drinking water treatment revolving loan funds established under section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12), shall, for those projects that are eligible to receive assistance under section 603 of the Federal Water Pollution Control Act (33 U.S.C. 1383) or section 1452(a)(2) of the Safe Drinking Water Act (42 U.S.C. 300j–12(a)(2)),

(1) issue a determination of waivers within 30 days of the conclusion of the informal public comment period pursuant to section 436(c) of title IV of division G of Public Law 113–76; and

(2) authorize, at the request of the State, 40-year financing for assistance under section 603(d)(2) of the Federal Water Pollution Control Act (33 U.S.C. 1383(d)(2)) or section 1452(f)(2) of the Safe Drinking Water Act (42 U.S.C. 300j–12(f)(2)).

(c) Effect of Section.—Nothing in this section authorizes the Administrator of the Environmental Protection Agency to modify any funding allocation, funding criteria, or other requirement relating to State water pollution control revolving funds established under title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) and the State drinking water treatment revolving loan funds established under section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12) for any other State.

**SEC. 308. INCREASED FLEXIBILITY FOR REGULAR PROJECT OPERATIONS.**

The Secretaries shall, consistent with applicable laws (including regulations)—

(1) to the maximum extent practicable, based on the availability of water and without causing land subsidence or violating water quality standards—

(A) help meet the contract water supply needs of Central Valley Project refuges through the improvement or installation of water conservation measures, water conveyance facilities, and wells to use groundwater resources, on the condition that those activities may only be accomplished by using funding made available under the Water Assistance Program or the WaterSMART program of the Department of the Interior; and

(B) make available to Central Valley Project contractors a quantity of Central Valley Project surface water obtained from the activities carried out under subparagraph (A);

(2) ~~contingent upon funding~~, in coordination with the Secretary of Agriculture, enter into an agreement with the National Academy of Sciences to conduct a comprehensive study, to be completed not later than 1 year after the date of enactment of this Act, on the effectiveness and environmental impacts of saltcedar biological control efforts on increasing water supplies and improving riparian habitats of the Colorado River and its principal

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tributaries, in the State and elsewhere;

(3) in coordination with the California Department of Water Resources and the California Department of Fish and Wildlife, implement offsite upstream projects in the Delta and upstream Sacramento River and San Joaquin basins that offset the effects on species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) due to activities carried out pursuant this Act, as determined by the Secretaries;

(4) manage reverse flow in the Old and Middle Rivers as prescribed by the [smelt biological opinions issued by the United States Fish and Wildlife Service on December 15, 2008, for Delta smelt and by the National Marine Fisheries Service on June 4, 2009, for and the salmonids biological opinion](#), or any successor biological opinions, to minimize water supply reductions for the Central Valley Project and the State Project; ~~and issue guidance no later than December 31, 2015 directing their employees to take all steps necessary to manage flow in accordance with this paragraph;~~

(5) as soon as practicable after the date of enactment of this Act and pursuant to existing authority available to the Secretary of the Interior, participate in, issue grants, or otherwise provide funding for pilot projects to increase water in reservoirs in regional river basins experiencing extreme, exceptional, or sustained drought that have a direct impact on the water supply of the State, including the Colorado River Basin, on the condition that any participation, grant, or funding by the Secretary of the Interior with respect to the Upper Division shall be with or to the respective State; and

(6) use all available scientific tools to identify any changes to real-time operations of the Bureau of Reclamation, State, and local water projects that could result in the availability of additional water supplies.

## SEC. 309. TEMPORARY OPERATIONAL FLEXIBILITY FOR FIRST FEW STORMS OF 2015 WATER YEAR.

### (a) Findings:

(1) During the 2014 water year, operations of the Central Valley Project and the State Water Project, the incidental take of adult Delta smelt was zero; of juvenile Delta smelt, 78 (7.7% of the incidental take ~~level~~ ~~limit~~); of winter run chinook, 339 (1.4% of the incidental take ~~level~~ ~~limit~~); of spring run chinook, zero; and of steelhead, 261 (8.7% of the incidental take ~~level~~ ~~limit~~).

(2) The Central Valley Project and State Water Project exceeded an Old and Middle River flow of -5,000 cubic feet per second over a 14-day average for brief periods after three storm events in February and March 2014, as a result of increased pumping, but did not cause substantially increased take of smelt or salmon.

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(3) Hydrological conditions in dry years, such as the 2014 water year, have not triggered water pumping restrictions pursuant to the smelt biological opinion.

(4) The Secretaries should be allowed more flexibility to increase pumping levels without causing significant risk to the listed species or weakening other environmental protections.

(5) Given California's severe drought conditions, significant groundwater withdrawals for irrigation due to lack of surface water supplies, and the depletion of water supplies in reservoirs, it is imperative that the Secretaries exercise for the duration of the existing drought emergency the flexibility provided herein to capture the maximum amount of ~~storm~~ flows resulting from storm events when and if they occur in the 2015 water year, and provide for the diversion of water to increase water ~~those~~ supplies to the Central Valley Project and State Water Project so that farms, businesses, and homes in drought-stricken areas will have an opportunity to bolster their meager supplies when water is available.

(b) In general. For the duration of the existing drought emergency, ~~C~~consistent with avoiding additional adverse effects upon listed fish species beyond the range of those authorized under the Endangered Species Act and other environmental protections under subsection (e), the Secretaries shall authorize the Central Valley Project and the State Water Project, combined, to operate at levels that result in negative Old and Middle River flows ~~at up to~~ -7500 cubic feet per second (based on United States Geological Survey gauges on Old and Middle Rivers) daily average for up to 21 cumulative days after October 1, 2014, as described in subsection (c).

(c) Days of temporary operational flexibility. The temporary operational flexibility described in subsection (b) shall be authorized on days that the California Department of Water Resources determines the daily average river flow of the Sacramento River is at, or above, 17,000 cubic feet per second as measured at the Sacramento River at Freeport gauge maintained by the United States Geologic Survey.

(d) Compliance with ESA authorizations. In carrying out this section, the Secretaries may continue to impose any requirements under the biological opinions during any period of temporary operational flexibility as they determine are reasonably necessary to avoid additional adverse effects on listed fish species beyond the range of those authorized under the Endangered Species Act.

(e) Other environmental protections.

(1) The Secretaries' actions under this section shall be consistent with applicable regulatory requirements under state law, including State Water Resources Control Board Decision 1641, as it may be implemented in any given year;

(2) During the first flush of sediment out the Delta during the 2015 water year, OMR flow may be managed at rates less negative than -5000 cubic feet per second for a minimum duration to avoid movement of adult ~~d~~Delta smelt (*Hypomesus transpacificus*) to areas in the southern Delta that would be likely to increase entrainment at Central Valley Project and State Water Project pumping plants;

(3) This section shall not ~~have any effect on the application~~ ble requirements of the salmonid biological opinion from April 1 to May 31, ~~unless the Secretary of Commerce finds that some or all of such applicable requirements may be adjusted during this time~~



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(4) During operations under this section, the Commissioner of Reclamation, in coordination with the Fish and Wildlife Service, National Marine Fisheries Service, and California Department of Fish and Wildlife, shall undertake a monitoring program and other data gathering to insure incidental take ~~limits~~ levels are not exceeded, and to identify potential negative impacts and actions, if any, necessary to mitigate ~~any~~ impacts of the temporary operational flexibility to listed species listed ~~as threatened or endangered under the Endangered Species Act, 16 U.S.C. 1531-1544~~; and

(5) The Commissioner is authorized to take any action, including the transfer of appropriated funds between accounts that, in the Commissioner's judgment, are necessary to mitigate the impacts of such operations as long as any such mitigation is consistent with the requirements of this section.

(f) Technical adjustments to target period. If, before temporary operational flexibility has been implemented on 21 cumulative days, the Secretaries operate the Central Valley Project and the State Water Project combined at levels that result in Old and Middle River flows less negative than -7500 cubic feet per second during days of temporary operational flexibility as defined in subsection (c), the duration of such operation shall not be counted toward the 21 cumulative days specified in subsection (b).

(g) Emergency consultation; effect on running averages.

(1) If necessary to implement the provisions of this section, the Commissioner shall use the emergency consultation procedures under the Endangered Species Act and its implementing regulation at 50 CFR 402.05 to temporarily adjust the operating criteria under the biological opinions, solely for the 21 days of temporary operational flexibility—

(A) no more than necessary to achieve the purposes of this section consistent with the environmental protections in subsections (d) and (e); and

(B) including, as appropriate, adjustments to ensure that the actual flow rates during the periods of temporary operational flexibility do not count toward the 5-day and 14-day running averages of tidally filtered daily Old and Middle River flow requirements under the biological opinions.

(2) Following the conclusion of the 21 days of temporary operational flexibility, the Commissioner shall not reinitiate consultation on these adjusted operations if the effects on listed fish species of these operations under this section remain within the range of those authorized under the Endangered Species Act.

(h) Level of detail required for analysis. In articulating the determinations required under this section, the Secretaries shall fully satisfy the requirements herein but shall not be expected to provide a greater level of supporting detail for the analysis than feasible to provide within the short time frame permitted for timely decision-making in response to changing conditions in the Delta.

(i) Duration. This section shall expire on September 30, 2015.

## **SEC. 310. EXPEDITING WATER TRANSFERS.**

(a) In General.—Section 3405(a) of the Central Valley Project Improvement Act (Public Law



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102–575; 106 Stat. 4709(a)) is amended—

(1) by redesignating paragraphs (1) through (3) as paragraphs (4) through (6), respectively;

(2) in the matter preceding paragraph (4) (as so designated)—

(A) in the first sentence, by striking “In order to” and inserting the following:

“(1) IN GENERAL.—In order to”; and

(B) in the second sentence, by striking “Except as provided herein” and inserting the following:

“(3) TERMS.—Except as otherwise provided in this section”; and

(3) by inserting before paragraph (3) (as so designated) the following:

“(2) EXPEDITED TRANSFER OF WATER.—The Secretary shall take all necessary actions to facilitate and expedite transfers of Central Valley Project water in accordance with—

“(A) this Act;

“(B) any other applicable provision of the reclamation laws; and

“(C) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).”;

(4) in paragraph (4) (as so designated)—

(A) in subparagraph (A), by striking “to combination” and inserting “or combination”; and

(B) by striking “3405(a)(2) of this title” each place it appears and inserting “(5)”;

(5) in paragraph (5) (as so designated), by adding at the end the following:

“(E) The contracting district from which the water is coming, the agency, or the Secretary shall determine if a written transfer proposal is complete within 45 days after the date of submission of the proposal. If the contracting district or agency or the Secretary determines that the proposal is incomplete, the district or agency or the Secretary shall state with specificity what must be added to or revised for the proposal to be complete.”; and

(6) in paragraph (6) (as so designated), by striking “3405(a)(1)(A)-(C), (E), (G), (H), (I), (L), and (M) of this title” and inserting “(A) through (C), (E), (G), (H), (I), (L), and (M) of paragraph (4)”.

(b) Conforming Amendments.—The Central Valley Project Improvement Act (Public Law 102–575) is amended—

(1) in section 3407(c)(1) (106 Stat. 4726), by striking “3405(a)(1)(C)” and inserting “3405(a)(4)(C)”; and

(2) in section 3408(i)(1) (106 Stat. 4729), by striking “3405(a)(1) (A) and (J) of this title” and inserting “subparagraphs (A) and (J) of section 3405(a)(4)”

**SEC. 311. WARREN ACT CONTRACTS.**

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[To be supplied.]

**SEC. 312. ADDITIONAL WARREN ACT CONTRACTS.**

[To be supplied.]

**TITLE IV—INCREASING WATER STORAGE**

**SEC. 401. FINDINGS.**

Congress finds that—

(1) the record drought conditions being experienced in the State as of the date of enactment of this Act are—

(A) expected to recur in the future; and

(B) likely to do so with increasing frequency;

(2) water storage is an indispensable and integral part of any solution to address the long-term water challenges of the State;

(3) Congress authorized relevant feasibility studies for 4 water storage projects in the State, including projects for—

(A) enlargement of Shasta Dam in Shasta County under section 2(a) of Public Law 96–375 (94 Stat. 1506), as reaffirmed under section 103(d)(1)(A)(i)(I) of Public Law 108–361 (118 Stat. 1684);

(B) enlargement of Los Vaqueros Reservoir in Contra Costa County under section 215 of Public Law 108–7 (117 Stat. 147), as reaffirmed under section 103(d)(1)(A)(i)(II) of Public Law 108–361 (118 Stat. 1684);

(C) construction of North-of-Delta Offstream Storage (Sites Reservoir) in Colusa County under section 215 of Public Law 108–7 (117 Stat. 147), as reaffirmed under section 103(d)(1)(A)(ii)(I) of Public Law 108–361 (118 Stat. 1684); and

(D) construction of the Upper San Joaquin River storage (Temperance Flat) in Fresno and Madera Counties under section 215 of Public Law 108–7 (117 Stat. 147), as reaffirmed under section 103(d)(1)(A)(ii)(II) of Public Law 108–361 (118 Stat. 1684);

(4) (A) as of the date of enactment of this Act, it has been more than 10 years since the authorization of the feasibility studies referred to in paragraph (3); but

(B) complete and final feasibility studies have not been prepared for any of those water storage projects;

(5) as of August 2014, only 2 of the 4 projects referred to in paragraph (3) have completed draft feasibility studies;

(6) the slow pace of work on completion of the feasibility studies for those 4 water storage projects is—

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(A) unjustified; and

(B) of deep concern; and

(7) there is significant public interest in, and urgency with respect to, completing all feasibility studies and environmental reviews for the water storage projects referred to in paragraph (3), given the critical need for that infrastructure to address the water challenges of the State.

**SEC. 402. CALFED STORAGE FEASIBILITY STUDIES.**

(a) In General.—Notwithstanding subparagraph (B)(i) of section 103(d)(1) of Public Law 108–361 (118 Stat. 1684), the Secretary of the Interior, acting through the Commissioner of Reclamation (referred to in this title as the “Secretary”), shall complete a final feasibility study and any other applicable environmental review documents for the project described in—

(1) subparagraph (A)(i)(I) of that section by not later than December 31, 2014;

(2) subparagraph (A)(ii)(II) of that section by not later than July 31, 2015.

(b) Environmental Reviews.—In carrying out subsection (a), the Secretary—

(1) shall ensure that—

(A) all applicable reviews, including reviews required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), are completed as expeditiously as practicable; and

(B) the shortest applicable process under that Act is used, including in the completion of—

(i) feasibility studies;

(ii) draft environmental impact statements; and

(iii) final environmental impact statements; and

(2) shall not be required to complete a draft or final environmental impact statement if the Commissioner of Reclamation determines, and the Secretary concurs, that the project fails to meet applicable Federal cost-benefit requirements or standards.

(c) Accountability.—

(1) If the Bureau of Reclamation determines that an environmental review document for the water storage projects referenced in of Section 103(d)(1) of P.L. 108-361 will not be completed according to the schedule specified in subsection (a), the Bureau shall notify the Senate Committee on Energy and Natural Resources, the Senate Appropriations Subcommittee on Energy and Water Development, and the House of Representatives Transportation and Infrastructure Committee within 14 days of the determination. The notification shall include:

(A) An explanation of the delay;

(B) The anticipated length of the delay and the revised completion date;

(C) The steps that the Bureau will take to mitigate the delay, including, but not limited to, a request to reprogram existing funds appropriated to the Bureau to meet the revised completion deadline.

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(2) The Bureau of Reclamation shall carry out the procedures in subsection (a) for each subsequent delay beyond the revised completion deadline.

**SEC. 403. WATER STORAGE PROJECT CONSTRUCTION.**

(a) The Secretary, acting through the Commissioner of the Bureau of Reclamation, may partner or enter into an agreement on the water storage projects identified in section 103(d)(1) of the Water Supply Reliability and Environmental Improvement Act (Public Law 108-361) (and Acts supplemental and amendatory to the Act) with local joint powers authorities formed pursuant to State law by irrigation districts and other local water districts and local governments within the applicable hydrologic region, to advance those projects.

(b) [PLACEHOLDER FOR AUTHORIZATION ISSUE]

**SEC. 404. OTHER STORAGE FEASIBILITY STUDIES.**

(a) Definition of Qualifying Project.—In this section, the term “qualifying project” means new surface water storage projects constructed on lands administered by the Department of the Interior in a State in which the Bureau of Reclamation has jurisdiction, exclusive of any easement, right-of-way, lease, or any private holding.

(b) Lead Agency.—

(1) QUALIFYING PROJECTS WITHIN JURISDICTION OF BUREAU OF RECLAMATION.—The Bureau of Reclamation shall serve as the lead agency for purposes of coordinating all reviews, analyses, opinions, statements, permits, licenses, and other approvals or decisions required under Federal law (including regulations) to construct qualifying projects within the jurisdiction of the Bureau.

(2) QUALIFYING PROJECTS OUTSIDE JURISDICTION OF BUREAU OF RECLAMATION.—If the site of a qualifying project is not located in a State in which the Bureau of Reclamation has jurisdiction, the Secretary shall, by not later than 45 days after the date of receipt of an application for the qualifying project—

(A) designate an alternate agency within the Department of the Interior to serve as the lead agency for purposes of coordinating all reviews, analyses, opinions, statements, permits, licenses, and other approvals or decisions required under Federal law (including regulations) to construct the qualifying project; or

(B) in consultation with the heads of other Federal departments and agencies, identify the appropriate lead agency for the qualifying project.

(c) Cooperating Agencies.—

(1) FEDERAL DEPARTMENTS AND AGENCIES.—The lead agency designated under paragraph (1) or (2) of subsection (b) shall—

(A) as soon as practicable after receipt of an application for a qualifying project, identify any Federal department or agency that may have jurisdiction over a review, permit, license, approval, or decision required for the qualifying project under applicable Federal laws (including regulations); and

(B) as soon as practicable after the date of identification under subparagraph (A)—

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- (i) notify each applicable department or agency of the identification; and
- (ii) designate the department or agency as a cooperating agency, unless the department or agency—
  - (I) has no jurisdiction or authority with respect to the qualifying project;
  - (II) has no expertise or information relevant to the qualifying project or any review, permit, license, approval, or decision associated with the qualifying project; or
  - (III) does not intend—
    - (aa) to submit comments regarding the qualifying project; or
    - (bb) to conduct any review of the qualifying project or make any decision with respect to the qualifying project in a manner other than in cooperation with the Bureau of Reclamation.

(2) STATES.—A State in which a qualifying project is proposed to be carried out may elect, consistent with Federal and State law, to participate as a cooperating agency, if the lead agency designated for the proposed qualifying project under paragraph (1) or (2) of subsection (b) determines that the applicable agency of the State—

- (A) has jurisdiction over the qualifying project under applicable Federal or State law;
- (B) is required to conduct or issue a review of the qualifying project; and
- (C) is required to make a determination regarding issuing a permit, license, or approval of the qualifying project.

(d) Duties of Lead Agency.—

(1) IN GENERAL.—Not later than 30 days after the date of receipt of an application for approval of a qualifying project, the lead agency shall hold a meeting among the applicant, the lead agency, and all cooperating agencies to establish, with respect to the qualifying project, all applicable—

- (A) requirements;
- (B) review processes; and
- (C) stakeholder responsibilities.

(2) SCHEDULE.—

(A) ESTABLISHMENT.—Not later than 30 days after the date of the meeting under paragraph (1), the lead agency, in consultation with the attendees of the meeting, shall establish a schedule for completion of the qualifying project, taking into consideration, among other relevant factors—

- (i) the responsibilities of cooperating agencies under applicable laws and regulations;
- (ii) the resources available to the cooperating agencies and non-Federal project stakeholders;

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- (iii) the overall size and complexity of the qualifying project;
- (iv) the overall schedule for, and cost of, the qualifying project; and
- (v) the sensitivity of the natural and historic resources that may be affected by the qualifying project.

(B) REQUIREMENTS.—On establishment of a schedule for a qualifying project under subparagraph (A), the lead and cooperating agencies shall—

- (i) to the maximum extent practicable, adhere to the schedule; and
- (ii) submit to the Committee on Environment and Public Works of the Senate and the Committee on Natural Resources of the House of Representatives on a semiannual basis a report describing any delays in the schedule, including a description of—

(I) the reasons for the delay;

(II) the actions that the lead and cooperating agencies will take to minimize the delay; and

(III) a revised schedule for the qualifying project, if applicable.

(e) Environmental Reviews.—

(1) SINGLE, UNIFIED ENVIRONMENTAL REVIEW DOCUMENT.—

(A) IN GENERAL.—The lead agency with respect to a qualifying project, in consultation with appropriate stakeholders and cooperating agencies, shall determine whether a single, unified environmental review document relating to the qualifying project is sufficient to comply with applicable Federal laws (including regulations), including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(B) ACTION ON DECLINATION.—If, after consultation under subparagraph (A), a lead agency determines not to adopt a single, unified environmental review document relating to a qualifying project—

(i) the lead agency shall—

(I) document the reasons for the determination; and

(II) submit to the Secretary a report describing those reasons; and

(ii) the Secretary may require the adoption of a single, unified document at the discretion of the Secretary, based on good cause.

(2) ENVIRONMENTAL ASSESSMENT.—Except as provided under paragraph (4), if the lead agency with respect to a qualifying project, in consultation with cooperating agencies, determines that an environmental assessment is sufficient to comply with the requirements of this subsection and other applicable Federal laws (including regulations)—

(A) the public comment period for a draft environmental assessment shall be no more than 60 days after publication in the Federal Register of notice of the public issuance of that draft; and

(B) the lead agency shall issue the final environmental assessment by not later than

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180 days after the end of the period for public comments on the draft environmental assessment.

(3) ENVIRONMENTAL IMPACT STATEMENT.— Except as provided under paragraph (4), if the lead agency with respect to a qualifying project, in consultation with cooperating agencies, determines that an environmental impact statement is required to comply with the requirements of this subsection and other applicable Federal laws (including regulations)—

(A) the public comment period for a draft environmental impact statement shall be no more than 60 days after publication in the Federal Register of notice of the public issuance of that draft; and

(B) the lead agency shall issue the final environmental impact statement by not later than 1 year after the end of the period for public comments on the draft environmental impact statement.

(4) MODIFICATION OF SCHEDULE.—In carrying out paragraphs (2) and (3),

(A) the lead agency with respect to a qualifying project may modify the schedule of the qualifying project if:

(i) the Federal lead agency can demonstrate good cause, such as the need for additional time to comply with other statutory or regulatory requirements other than the National Environmental Policy Act of 1969, and the head of that agency submits to Congress a written determination describing the cause and reasons for the modification no less than 30 days before the original scheduled deadline; or

(ii) the Federal lead agency, the project sponsor, the joint lead agency (as applicable), and all participating and cooperating agencies agree to such modification.

(B) no modification pursuant to subparagraph (4)(A) shall postpone the issuance of a final environmental assessment by more than 1 year, or a final environmental impact statement by more than 2 years, unless the conditions under (4)(A)(i) or (4)(A)(ii) are met.

(C) If a modification occurs pursuant to this paragraph, the Federal lead agency shall issue and adhere to the revised schedule unless the conditions under (4)(A)(i) or (4)(A)(ii) are met.

(5) REQUIREMENTS.—On commencement of the environmental review process under this subsection, the lead and cooperating agencies shall, as soon as practicable—

(A) make available to all stakeholders of the qualifying project information regarding—

(i) the environmental and socioeconomic resources located within the area of the qualifying project; and

(ii) the general locations of the alternatives under consideration; and

(B) identify any issues of concern regarding the potential environmental or socioeconomic effects of the qualifying project, including any issues that could substantially delay or prevent an agency from granting a permit or other approval that

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is needed for a study relating to the qualifying project.

(f) Concurrent Review Actions.—

(1) IN GENERAL.—Any review, analysis, permit, license, approval, or decision regarding a qualifying project made by a Federal, State, or local government agency shall be—

(A) conducted, to the maximum extent practicable, concurrently with any other applicable government agency; and

(B) incorporated in the schedule for the qualifying project under subsection (d)(2).

(2) REQUIREMENT.—The lead and cooperating agencies for a qualifying project shall formulate and implement administrative, policy, and procedural mechanisms to enable adherence to the schedule for the qualifying project in a timely, coordinated, and environmentally responsible manner.

(3) GUIDANCE.—The Secretary shall issue guidance regarding the use of programmatic approaches to carry out the environmental review process that, to the maximum extent practicable—

(A) eliminates repetitive discussions of the same issues;

(B) focuses on the actual issues ripe for analysis at each level of review;

(C) establishes a formal process for coordinating with participating and cooperating agencies, including the establishment of a list of all data required to carry out an environmental review process; and

(D) complies with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and all other applicable laws and regulations.

(g) Administrative Record and Data Management.—

(1) IN GENERAL.—The lead agency shall—

(A) be responsible for compiling the administrative record of the information used as the basis for decisions relating to a qualifying project; and

(B) to the maximum extent practicable and consistent with Federal law, make available all data regarding the qualifying project in a format that is accessible via electronic means for project stakeholders, cooperating agencies, and the public.

(2) REPORTS.—Not less frequently than once each year, the lead agency shall submit a progress report regarding a qualifying project to project stakeholders, cooperating agencies, the Committee on Environment and Public Works of the Senate, and the Committee on Natural Resources of the House of Representatives.

(h) Participation by Non-Federal Project Sponsors.—

(1) APPLICATION TO SERVE AS COOPERATING AGENCY.—A non-Federal sponsor of a qualifying project may submit to the lead Secretary an application to serve as a cooperating agency of the qualifying project for purposes of preparing any necessary documents relating to the qualifying project, including an environmental review, if—

(A) the non-Federal sponsor is a public agency as defined under the laws of the state in which the agency is located;



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(B) the non-Federal sponsor agrees to adhere to—

(i) all required Federal laws (including regulations) in carrying out the qualifying project; and

(ii) all decisions regarding the qualifying project that have been agreed on by other stakeholders of the qualifying project; and

(C) the applicable lead agency certifies that participation by the non-Federal sponsor will not inappropriately bias the qualifying project in favor of the non-Federal sponsor.

(2) FUNDS.—Any funds contributed by a non-Federal sponsor to a qualifying project—

(A) may be accepted to maintain or accelerate progress on the qualifying project, subject to the condition that the Secretary shall—

(i) review the use of the funds; and

(ii) certify in writing that the funds—

(I) are used solely to complete applicable environmental reviews; and

(II) do not unduly influence any permit or approval decision regarding the qualifying project; and

(B) shall be applied toward the non-Federal cost-share of the qualifying project.

(i) Applicability to Calfed Storage Studies.—For any feasibility study referred to in section 401(3), this section shall apply to all activities to be carried out under the study on or after the date of enactment of this Act that would lead to congressional authorization of an applicable project for construction.

## **SEC. 405. DAM SAFETY PROJECTS WITH INCREASED STORAGE COMPONENT.**

(a) Additional Project Benefits.—The Reclamation Safety of Dams Act of 1978 is amended—

(1) in section 3 (43 U.S.C. 507), by striking “Construction” and inserting “Except as provided in section 5B, construction”; and

(2) by inserting after section 5A (43 U.S.C. 509a) the following:

### **“SEC. 5B. ADDITIONAL PROJECT BENEFITS.**

“(a) In General.—Notwithstanding section 3, if the Secretary, in the judgment of the Secretary, makes a determination described in subsection (b), the Secretary is authorized to develop any additional project benefit—

“(1) through the construction of new or supplementary works on a project in conjunction with the activities carried out by the Secretary pursuant to section 2; and

“(2) subject to the conditions described in the feasibility study relating to the project.

“(b) Description of Determination.—A determination referred to in subsection (a) is a determination by the Secretary that—

“(1) an additional project benefit, including but not limited to additional conservation

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storage capacity, is—

“(A) necessary; and

“(B) in the interests of the United States; and

“(2) the project benefit proposed to be carried out is—

“(A) feasible; and

“(B) not inconsistent with the purposes of this Act.

“(c) Requirements.—The costs associated with developing an additional project benefit under this section shall be—

“(1) allocated to entity or entities benefitting from the additional conservation storage capacity, subject to agreement between the state and federal funding agencies on such allocations; and

“(2) repaid in accordance with all applicable provisions of Federal reclamation law (the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act (43 U.S.C. 371 et seq.).”.

(b) San Luis Reservoir Expansion.—Section 103(f)(1)(A) of Public Law 108–361 (118 Stat. 1694) is amended—

(1) by striking “Funds” and inserting the following:

“(i) IN GENERAL.—Funds”; and

(2) by adding at the end the following:

“(ii) ENVIRONMENTAL REVIEWS AND FEASIBILITY STUDY.—The Commissioner of Reclamation shall submit to Congress—

“(I) an expansion draft environmental impact statement and feasibility study relating to the San Luis Reservoir by not later than April 1, 2016; and

“(II) a final environmental impact statement relating to the San Luis Reservoir by not later than December 31, 2016.”.

**SEC. 406. UPDATING WATER OPERATIONS MANUALS  
FOR NON-FEDERAL PROJECTS.**

(a) Definitions.—In this section:

(1) NON-FEDERAL PROJECT.—

(A) IN GENERAL.—The term “non-Federal project” means a non-Federal reservoir project operated for flood control in accordance with rules prescribed by the Secretary pursuant to section 7 of the Act of December 22, 1944 (commonly known as the “Flood Control Act of 1944”) (58 Stat. 890, chapter 665).

(B) EXCLUSION.—The term “non-Federal project” does not include any dam or reservoir owned by—

(i) the Bureau of Reclamation; or

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(ii) the Corps of Engineers.

(2) OWNER.—The term “owner” with respect to a non-Federal project, does not include—

(A) the Secretary;

(B) the Secretary of the Interior; or

(C) the head of any other Federal department or agency, notwithstanding any Federal monetary contribution made toward the construction cost of the relevant non-Federal project, if the contribution is predicated on flood control or other specific benefit.

(3) SECRETARY.—The term “Secretary” means the Secretary of the Army.

(b) Review by Secretary.—

(1) IN GENERAL.—Not later than 1 year after the date of receipt of a request from the owner of a non-Federal project, the Secretary, in consultation with the owner, shall review the water control manual and flood control rule curves and any operational or structural modifications proposed by the owner, including the use of improved weather forecasting and run-off forecasting methods, to enhance the existing purposes of the non-Federal project.

(2) REPORT.—Not later than 90 days after the date of completion of a review under paragraph (1), the Secretary shall submit to the owner of the applicable non-Federal project a report describing the results of the review.

(3) PRIORITY.—In carrying out of this subsection, the Secretary shall give priority to review and revision of water control manuals and flood control rule curves for any non-Federal project—

(A) that is located in a State in which a drought emergency has been declared during the 1-year period ending on the date of review by the Secretary;

(B) the owner of which has submitted to the Secretary a formal request to review or revise the operations manual or rule curves to accommodate new watershed data or proposed project modifications or operational changes;

(C) the water control manual and hydrometeorological information establishing the flood control rule curves of which have not been revised during the 20-year period ending on the date of review by the Secretary;

(D) with respect to which a completed probable maximum flood analysis or other data indicates that revisions of the project control manual or rule curves are likely to enhance water supply benefits and flood control operations; and

(E) modifications or operational changes proposed by the owner of which are likely to enhance water supply benefits and flood control operations.

(4) NON-FEDERAL CONTRIBUTIONS.—The Secretary may accept non-Federal funds for all or a portion of the cost of carrying out a review or revision of water control manuals and rule curves for non-Federal projects under this subsection.

**SEC. 407. CENTRAL VALLEY PROJECT.**

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(a) Cooperative Agreements.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, to determine the feasibility of an agreement for long-term use of an existing or expanded non-Federal storage or conveyance facility to augment Federal water supply, ecosystem, and operational flexibility benefits, the Secretary shall offer to enter into cooperative agreements with non-Federal entities to provide replacement water supplies for drought relief for—

(A) contractors of the Central Valley Project (as defined in section 3403 of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706));

(B) units of the National Wildlife Refuge System;

(C) State wildlife areas; and

(D) private wetland areas.

(2) REQUIREMENTS.—A cooperative agreement under this subsection shall—

(A) include the purchase of storage capacity in non-Federal facilities from willing sellers; and

(B) provide reimbursement for the temporary use of available capacity in existing above-ground, off-stream storage and associated conveyance facilities owned by local water agencies.

(b) Report.—Not later than 2 years after the date of enactment of this Act, the Secretary shall submit to the Chief of the National Wildlife Refuge System and contractors of the Central Valley Project a report describing the feasibility of the agreement for long-term use described in subsection (a)(1).

## TITLE V—WATER RIGHTS PROTECTIONS

### SEC. 501. PROTECTIONS FOR STATE WATER PROJECT CONTRACTORS.

If, as a result of the application of this Act, the California Department of Fish and Wildlife:

(a) revokes the consistency determination pursuant to California Fish and Game Code section 2080.1;

(b) amends or issues a new consistency determination pursuant to California Fish and Game Code section 2080.1 in a manner that results in reduced water supply to the State Water Project as compared with the water supply available under the ~~S~~smelt ~~B~~biological ~~O~~opinion and the ~~S~~salmonid ~~B~~biological ~~O~~opinion; or

(c) requires take authorization under section 2081 for operation of the State Water Project in a manner that results in reduced water supply to the State Water Project as compared with the water supply available under the ~~S~~smelt ~~B~~biological ~~O~~opinion and the ~~S~~salmonid ~~B~~biological ~~O~~opinion,

then, the water supply benefits of such action by the California Department of Fish and

**Commented [A6]:** The agencies have not had a chance to fully analyze this Title. We expect the House to provide further suggestions, and we will seek the agencies' technical feedback on the entire title with the House's suggestions included.

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Wildlife accruing to the Central Valley Project, if any, shall be shared equally with the State Water Project.

**SEC. 502. AREA OF ORIGIN PROTECTIONS.**

(a) The Secretary of the Interior (Secretary) is directed in the operation of the Central Valley Project (CVP) to adhere to California's water rights laws governing water rights priorities by honoring water rights senior to those held by the United States for operation of the CVP, regardless of the source of priority, including any appropriative water rights initiated prior to December 19, 1914, as well as water rights and other priorities perfected or to be perfected pursuant to California Water Code Part 2 of Division 2. Article 1.7 (commencing with section 1215 of Chapter 1 of Part 2 of Division 2, Sections 10505, 10505.5, 11128, 11460, 11461, 11462 and 11463, and Sections 12200 to 12220, inclusive).

(b) Any action that requires that diversions be bypassed or that involves the release of water from any CVP water storage facility taken by the Secretary or the Secretary of the Department of Commerce pursuant to Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531, et seq.) shall be applied in a manner that is consistent with water rights priorities established by California law.

**SEC. 503. NO REDIRECTED ADVERSE IMPACTS.**

The Secretary shall ensure that, except as otherwise provided for in a water service or repayment contract, actions taken in compliance with legal obligations imposed pursuant to or as a result of this Act, including, but not limited to, such actions under the Endangered Species Act of 1973 (16 U.S.C. § 1531 et seq.) and other federal laws, shall not cause redirected adverse water supply or fiscal impacts to those within the Sacramento River Watershed or the State Water Project.

**SEC. 504. EFFECT ON STATE LAWS.**

Nothing in this Act preempts any State law in effect on the date of enactment of this Act, including area of origin and other water rights protections.

**TITLE VI—MISCELLANEOUS**

**SEC. 601. AUTHORIZED SERVICE AREA.**

(a) In General.—The authorized service area of the Central Valley Project authorized under the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706) shall include the area within the boundaries of the Kettleman City Community Services District, California, as in existence on the date of enactment of this Act.

(b) Long-term Contract.—

(1) IN GENERAL.—Notwithstanding the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706) and subject to paragraph (2), the Secretary of the Interior, in accordance with the reclamation laws, shall enter into a long-term contract with the Kettleman City Community Services District, California, under terms and conditions

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mutually agreeable to the parties, for the delivery of up to 900 acre-feet of Central Valley Project water for municipal and industrial use.

(2) LIMITATION.—Central Valley Project water deliveries authorized under the contract entered into under paragraph (1) shall be limited to the minimal quantity necessary to meet the immediate needs of the Kettleman City Community Services District, California, in the event that local supplies or State Water Project allocations are insufficient to meet those needs.

(c) Permit.—The Secretary shall apply for a permit with the State for a joint place of use for water deliveries authorized under the contract entered into under subsection (b) with respect to the expanded service area under subsection (a), consistent with State law.

(d) Additional Costs.—If any additional infrastructure, water treatment, or related costs are needed to implement this section, those costs shall be the responsibility of the non-Federal entity.

## SEC. 602. RESCHEDULED WATER.

(a) In General.—In connection with operations of the Central Valley Project, California, if the San Luis Reservoir does not fill by the last day of February of any year, the Secretary of the Interior shall permit any entity with an agricultural water service or repayment contract for the delivery of water from the Delta Division or the San Luis Unit to reschedule into the immediately following contract year (March 1 through the last day of February) any unused Central Valley Project water previously allocated for irrigation purposes.

(b) Apportionment.—If Project water remaining in Federal storage in San Luis Reservoir on the last day of February of any year is insufficient to meet the aggregate of all requests to reschedule water requests under subsection (a), the Secretary of the Interior shall, based on contract quantity, apportion among all contractors that request to reschedule water all Project water remaining in San Luis Reservoir on the last day of February of the applicable year.

(c) Availability of Additional Water.—If water remaining in San Luis Reservoir on the last day of February is apportioned pursuant to paragraph (b), the Secretary shall make all reasonable efforts to make available additional water up to the aggregate of rescheduling requests; provided that such efforts shall not interfere with Central Valley Project operations or the Secretary's ability to meet the United States' obligations to San Joaquin River Exchange Contractors or other settlement contractors in the contract year for which Central Valley Project water has been rescheduled.

## SEC. 603. FISHERIES DISASTER DECLARATION.

[TO BE SUPPLIED.]

## SEC. 604. OVERSIGHT BOARD FOR RESTORATION FUND.

(a) Report; Advisory Board.—Section 3407 of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4726) is amended by adding at the end the following:

“(g) Report on Expenditure of Funds.—

“(1) IN GENERAL.—For each fiscal year, the Secretary, in consultation with the Advisory

**Commented [A7]:** The agencies are still reviewing the contents of this section. We anticipate the House will provide further suggestions, and we intend to seek the agencies' technical feedback on this language as modified by the House's suggestions.

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Board, shall submit to Congress a plan for the expenditure of all of the funds deposited into the Restoration Fund during the preceding fiscal year.

“(2) CONTENTS.—The plan shall include an analysis of the cost-effectiveness of each expenditure.

“(h) Advisory Board.—

“(1) ESTABLISHMENT.—There is established the Restoration Fund Advisory Board (referred to in this section as the ‘Advisory Board’), which shall be composed of 14 members appointed by the Secretary.

“(2) MEMBERSHIP.—

“(A) IN GENERAL.—The Secretary shall appoint members to the Advisory Board that represent the various Central Valley Project stakeholders, of whom—

“(i) 3 members shall be agricultural users of the Central Valley Project;

“(ii) 2 members shall be municipal and industrial users of the Central Valley Project;

“(iii) 3 members shall be power contractors of the Central Valley Project;

“(iv) 1 member shall be a representative of a federal wildlife refuge that contracts for Central Valley Project water supplies with the Bureau of Reclamation;

“(v) 1 member shall represent nongovernmental organizations involved in the protection and restoration of California fisheries;

“(vi) 1 member shall represent the commercial fishing industry;

“(vii) 1 member shall represent the recreational fishing industry; and

“(viii) 2 members shall be appointed at the discretion of the Secretary.

“(B) OBSERVER.—The Secretary and the Secretary of Commerce may each designate a representative to act as an observer of the Advisory Board.

“(C) CHAIRMAN.—The Secretary shall appoint 1 of the members described in subparagraph (A) to serve as Chairman of the Advisory Board.

“(3) TERMS.—The term of each member of the Advisory Board shall be 4 years.

“(4) DATE OF APPOINTMENTS.—The appointment of a member of the Panel shall be made not later than—

(A) the date that is 120 days after the date of enactment of this Act; or

(B) in the case of a vacancy on the Panel described in subsection (c)(2), the date that is 120 days after the date on which the vacancy occurs.

“(5) Vacancies.—

(A) IN GENERAL.—A vacancy on the Panel shall be filled in the manner in which the original appointment was made and shall be subject to any conditions that applied with respect to the original appointment.

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(B) FILLING UNEXPIRED TERM.—An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

(C) EXPIRATION OF TERMS.—The term of any member shall not expire before the date on which the successor of the member takes office.

“(6) Removal —A Member of the Panel may be removed from office by the Secretary of the Interior.

“(7) Federal Advisory Committee Act. —The Panel shall not be subject to the requirements of the Federal Advisory Committee Act.

“(8) DUTIES.—The duties of the Advisory Board are—

“(A) to meet not less frequently than semiannually to develop and make recommendations to the Secretary regarding priorities and spending levels on projects and programs carried out under this title;

“(B) to ensure that any advice given or recommendation made by the Advisory Board reflects the independent judgment of the Advisory Board;

“(C) not later than December 31, 2015, and annually thereafter, to submit to the Secretary and Congress the recommendations under subparagraph (A); and

“(D) not later than December 31, 2015, and biennially thereafter, to submit to Congress a report that details the progress made in achieving the actions required under section 3406.

“(9) ADMINISTRATION.—With the consent of the appropriate agency head, the Advisory Board may use the facilities and services of any Federal agency.”

“(10) Cooperation and Assistance.—

(A) Upon request of the Panel Chairperson for information or assistance to facilitate the carrying out of this section, the Secretary of the Interior shall promptly provide such information, unless otherwise prohibited by law.

(B) Space and Assistance.—The Secretary of the Interior shall provide the Panel with appropriate and adequate office space, together with such equipment, office supplies, and communications facilities and services as may be necessary for the operation of the Panel, and shall provide necessary maintenance services for such offices and the equipment and facilities located therein.

## SEC. 605. WATER OPERATIONS REVIEW PANEL.

(a) Establishment.—There is established a panel to be known as the “Water Operations Review Panel”.

(b) Membership.—

(1) COMPOSITION.—The Panel shall be composed of 5 members appointed by the Secretary of the Interior, in consultation with the Secretary of Commerce, of whom—

(A) 1 member shall be a person who possesses expert knowledge of methods generally accepted by the scientific community, former State elected official, who shall be the Chairperson of the Panel;



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(B) 2 members shall be fisheries biologists, of whom—

(i) 1 member shall have expertise in Delta smelt; and

(ii) 1 member shall have expertise in salmonids; and

(C) 2 members shall be engineers with substantial expertise in water operations.

~~(2) RECOMMENDATIONS.—The Secretary of the Interior shall consider the recommendations~~

~~(43)~~ (4) DATE OF APPOINTMENTS.—The appointment of a member of the Panel shall be made not later than—

(A) the date that is 120 days after the date of enactment of this Act; or

(B) in the case of a vacancy on the Panel described in subsection (c)(2), the date that is 120 days after the date on which the vacancy occurs.

(c) Term; Vacancies.—

(1) TERMS.—A member of the Panel shall be appointed for a term of 3 years, except that, with respect to the members first appointed under this section—

(A) the Chairperson shall be appointed for a term of 3 years;

(B) of the members appointed under subsection (b)(1)(B)—

(i) 1 member shall be appointed for a term of 1 year; and

(iii) 1 member shall be appointed for a term of 2 years;

(C) of the members appointed under subsection (b)(1)(C)—

(i) 1 member shall be appointed for a term of 1 year; and

(ii) 1 member shall be appointed for a term of 2 years.

(2) VACANCIES.—

(A) IN GENERAL.—A vacancy on the Panel shall be filled in the manner in which the original appointment was made and shall be subject to any conditions that applied with respect to the original appointment.

(B) FILLING UNEXPIRED TERM.—An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

~~(3) EXPIRATION OF TERMS.—The term of any member shall not expire before the date on which the successor of the member takes office.~~

(d) Removal. —A Member of the Panel may be removed from office by the Secretary of the Interior.

(e) Federal Advisory Committee Act. —The Panel shall not be subject to the requirements of the Federal Advisory Committee Act.

(f) Duties.

(1) Annual Assessment and Report on Agencies' Operational Decisions under this Act.—

(A) IN GENERAL.—No later than November 30, 2015, and annually no later than

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November 30 thereafter, the Panel shall report an assessment of the agencies' operational decisions under this Act and recommendations for the prospective implementation of this Act to the following Congressional committees:

- (i) Senate Committee on Environment and Public Works;
- (ii) Senate Appropriations Subcommittee on Energy and Water Development;
- (iii) House Natural Resources Committee; and
- (iv) House Appropriations Subcommittee on Energy and Water Development.

(B) RETROSPECTIVE ASSESSMENT.—In making the retrospective assessment under paragraph (1), the Panel shall review and evaluate restrictions imposed under the smelt biological opinion and the salmonid biological opinion, and successor opinions, on operations of the Central Valley Project and State Water Project ~~the Director of the Fish and Wildlife Service, Administrator of NOAA Fisheries, and Commissioner of Reclamation's~~ —

(i) to determine the efficacy of those restrictions for the purpose of protecting listed species; and decisions in implementing this Act and other Federal laws applicable to the operations of the Central Valley Project and the State Water Project;

(ii) efforts to minimize water supply reductions for the Central Valley Project and State Water Project resulting from implementation of the smelt biological opinion and the salmonid biological opinion, and successor opinions, ~~disruptions while complying with the Endangered Species Act and this Act.~~

(C) PROSPECTIVE RECOMMENDATIONS.—The Panel shall make recommendations for prospective actions and potential actions warranting further study to better achieve the purposes of this Act and the Endangered Species Act as applied to the operations of the Central Valley Project and the State Water Project, including proposals—

(i) that in combination, both increase the survival of listed species and increase water supplies for the Central Valley Project and the State Water Project;

(ii) to increase the survival of listed fish species with little to no adverse effects on water supplies for the Central Valley Project and the State Water Project that would result from taking the specific proposed action recommended;

(iii) ~~iv~~ that respond to the annual Delta Science Program Independent Review Panel reports on the Long-term Operations Opinions.

(2) Five Year Assessment on Effectiveness of Provisions of Act and Recommended Legislative Changes.

(1) Upon request of the Panel Chairperson for information or assistance to facilitate the carrying out of this section, the Secretary of Commerce and the Secretary of the Interior shall promptly provide such information, unless otherwise prohibited by law.

(2) Space and Assistance.—The Secretary of the Interior shall provide the Panel with appropriate and adequate office space, together with such equipment, office supplies, and communications facilities and services as may be necessary for the operation of the Panel, and shall provide necessary maintenance services for such offices and the equipment and facilities located therein.

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**SEC. 606. CONTINGENCY IN EVENT OF CONTINUING  
RESOLUTION FOR FISCAL YEAR 2015.**

The deadlines that apply to each respective Secretary, or agency, contained in sections 103(b), 103(d), 202, 204, and 205 shall be extended by the number of days that any resolution providing continuing appropriations for the Fish and Wildlife Service or NOAA Fisheries for fiscal year 2015 is in effect after January 1, 2015 if:

(1) such a resolution providing continuing appropriations for these agencies is enacted;

(2) the continuing resolution does not include funding for the agency actions prescribed in the sections of this Act specified above; and

(3) a funding shortfall remains for such agency actions after the Secretaries have consulted with the California Department of Water Resources, Central Valley Project and State Water Project contractors, and the Interagency Ecological Program.

**From:** Nelson, Damon  
**Sent:** Friday, October 17, 2014 5:54 AM  
**To:** Tom Birmingham  
**Subject:** RE: Edits to Water Bill

I talked to Dana about dinner next Saturday. She is good to go. She has Reserve Duty that weekend. So, 6:30 or 7 would be best. I know it is old for you, but her favorite place is Cap Grille.

On another note, I know we were talking about language that would mandate -5,000 unless the Secretary determines in writing to reduce the flow. I can't seem to find that language. Or was it something you presented to Kern to see if that will satisfy them?

---

**From:** Tom Birmingham [mailto:tbirmingham@westlandswater.org]  
**Sent:** Thursday, October 16, 2014 7:18 PM  
**To:** Marklund, Chris  
**Cc:** Nelson, Damon; dbernhardt@bhfs.com  
**Subject:** Edits to Water Bill

Chris,

David Bernhardt informed me that he had spoken to you and that you requested comments on the most recent language proposed by the Senator Feinstein's office. I believe I had related to you that I had given proposed changes to Damon Nelson on a hard copy when I was in DC last week. The attached document was prepared by Damon, and it incorporates the edits I provided to him. Damon said he was comfortable with me sharing this document with you.

Please let me know if you have any questions about these proposed edits.

Tom

**From:** Marklund, Chris  
**Sent:** Friday, October 17, 2014 6:23 AM  
**To:** 'Tom Birmingham'  
**Subject:** RE: Edits to Water Bill

Thank you.

--

Chris Marklund  
Legislative Director  
Rep. David Valadao  
1004 Longworth House Office Building  
Washington, DC 20024  
Ph: 202-225-4695  
Fax: 202-225-3196  
[Chris.Marklund@mail.house.gov](mailto:Chris.Marklund@mail.house.gov)

*Please follow Rep. David G. Valadao on Facebook, Twitter, and Instagram*



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Please let me know if you have any questions about these proposed edits.

Tom

**From:** Watts, John (Feinstein)  
**Sent:** Friday, October 17, 2014 7:12 AM  
**To:** Bernhardt, David L.  
**CC:** 'Tom Birmingham'  
**Subject:** See proposed edits to section 203(c) on page 13  
**Attachments:** leg counsel draft 10-17-14.docx

David, I will call you about this shortly to discuss it.

Title: To provide drought relief in the State of California, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

## SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the “California Drought Relief Act of 2014”.

(b) Table of Contents.—The table of contents of this Act is as follows:

Sec.1.Short title; table of contents.

Sec.2.Findings.

Sec.3.Definitions.

## TITLE I—ADJUSTING DELTA SMELT MANAGEMENT BASED ON INCREASED REAL-TIME MONITORING AND UPDATED SCIENCE

Sec.101.Definition of Secretary.

Sec.102.Revision of incidental take level calculation for Delta smelt to reflect new science.

Sec.103.Factoring increased real-time monitoring and updated science into Delta smelt management.

## TITLE II—ENSURING SALMONID MANAGEMENT IS RESPONSIVE TO NEW SCIENCE

Sec.201.Definition of Secretary.

Sec.202.Required scientific studies.

Sec.203.Process for ensuring salmonid management is responsive to new science.

Sec.204.Pilot program to protect native anadromous fish in Stanislaus River.

Sec.205.Calfed invasive species pilot projects in the Sacramento-San Joaquin Bay Delta and its tributaries.

Sec.206.Mark fishery and harvest management.

Sec.207.New actions to benefit Central Valley salmonids.

## TITLE III—OPERATIONAL FLEXIBILITY AND DROUGHT RELIEF

Sec.301.Findings.

Sec.302.Definitions.

- 1 Sec.303.Operational flexibility in times of drought.
- 2 Sec.304.Operation of cross-channel gates.
- 3 Sec.305.Flexibility for export/inflow ratio.
- 4 Sec.306.Emergency environmental reviews.
- 5 Sec.307.Prioritizing State revolving funds during droughts.
- 6 Sec.308.Increased flexibility for regular project operations.
- 7 Sec.309.Temporary operational flexibility for first few storms of 2015 water year.
- 8 Sec.310.Expediting water transfers.
- 9 Sec.311.Warren Act contracts.
- 10 Sec.312.Additional Warren Act contracts.

## 11 TITLE IV—INCREASING WATER STORAGE

- 12 Sec.401.Findings.
- 13 Sec.402.Calfed storage feasibility studies.
- 14 Sec.403.Water storage project construction.
- 15 Sec.404.Other storage feasibility studies.
- 16 Sec.405.Dam safety projects with increased storage component.
- 17 Sec.406.Updating water operations manuals for non-Federal projects.
- 18 Sec.407.Central Valley Project.

## 19 TITLE V—WATER RIGHTS PROTECTIONS

- 20 Sec.501.Protections for State Water Project contractors.
- 21 Sec.502.Area of origin protections.
- 22 Sec.503.No redirected adverse impacts.
- 23 Sec.504.Effect on State laws.

## 24 TITLE VI—MISCELLANEOUS

- 25 Sec.601.Authorized service area.
- 26 Sec.602.Rescheduled water.
- 27 Sec.603.Fisheries disaster declaration.
- 28 Sec.604.Restoration Fund Advisory Board.
- 29 Sec.605.Water Operations Review Panel.
- 30 Sec.606.Contingency in event of continuing resolution for fiscal year 2015.

## 31 SEC. 2. FINDINGS.



Congress finds the following:

(1) As established in the Proclamation of a State of Emergency issued by the Governor of the State on January 17, 2014, the State is experiencing record dry conditions.

(2) Extremely dry conditions have persisted in the State since 2012, and the drought conditions are likely to persist into the future.

(3) As of September 2014, the forecast of the National Weather Service does not show a high likelihood of the State experiencing significant precipitation for the remainder of the year.

(4) The water supplies of the State are at record-low levels, as indicated by the fact that all major Central Valley Project reservoir levels were at 20 to 35 percent of capacity as of September 25, 2014.

(5) The lack of precipitation has been a significant contributing factor to the 6,091 fires experienced in the State as of September 15, 2014, and which covered nearly 400,000 acres.

(6)(A) According to a study released by the University of California, Davis in July 2014, the drought has led to—

(i) the fallowing of 428,000 acres of farmland;

(ii) the loss of \$810,000,000 in crop revenue;

(iii) the loss of \$203,000,000 in dairy and other livestock value; and

(iv) the increase of groundwater pumping costs by \$454,000,000.

(B) The statewide economic costs are estimated to be \$2,200,000,000, with over 17,000 seasonal and part-time agricultural jobs lost.

(7) Level II water deliveries under the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706) and amendments made by that Act to refuges have also declined by 25 percent in the north of the Delta region, and by 35 percent in the south of the Delta region.

(8) Only 1/6 of the usual acres of rice fields are being flooded, which leads to a significant decline in habitat for migratory birds and an increased risk of disease at the remaining wetland due to overcrowding of the birds.

(9) The drought of 2013 through 2014 constitutes a serious emergency that poses immediate and severe risks to human life and safety and to the environment throughout the State.

(10) The serious emergency described in paragraph (4) requires—

(A) immediate and credible action that respects the complexity of the water system of the State and the importance of the water system to the entire State; and

(B) policies that do not pit stakeholders against one another, which history shows only leads to costly litigation that benefits no one and prevents any real solutions.

(11) Federal law (including regulations) directly authorizes expedited decisionmaking procedures and environmental and public review procedures to enable timely and appropriate implementation of actions to respond to the type and severity of the serious

emergency described in paragraph (4).

(12) The serious emergency described in paragraph (4) fully satisfies the conditions necessary for the exercise of emergency decisionmaking, analytical, and public review requirements under—

(A) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(B) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(C) water control management procedures of the Corps of Engineers described in section 222.5 of title 33, Code of Federal Regulations (including successor regulations); and

(D) the Reclamation States Emergency Drought Relief Act of 1991 (Public Law 102–250; 106 Stat. 53).

(13) The smelt biological opinion and salmonid biological opinion contain reasonable and prudent alternatives to protect listed fish species from being jeopardized by operation of the Central Valley Project and State Water Project and to prevent adverse modification of designated critical habitat.

(14) The effect of those reasonable and prudent alternatives in the biological opinions may restrict the quantity of water pumping that can occur to deliver water for agricultural, municipal, industrial, groundwater, and refuge uses in the State.

(15) Data on the difference between water demand and reliable water supplies for various regions south of the Delta, including the San Joaquin Valley, indicate there is a significant annual gap between reliable water supplies to meet agricultural, municipal, industrial, groundwater, and refuge water needs within the South of Delta and Friant Division of the Central Valley Project and the State Water Project south of the Sacramento-San Joaquin River Delta and north of the Tehachapi mountain range and the demands of those areas.

(16) The gap described in paragraph (15) varies depending on the methodology of the analysis performed, but can be represented in the following ways:

(A) For Central Valley Project South of Delta water service contractors, if it is assumed that a water supply deficit is the difference between the quantity of water available for allocation and the maximum contract quantity of water, particularly in years closer to the date of enactment of this Act, the water supply deficits that have developed from 1992 to 2014 as a result of changes aside from natural variations in hydrology during this timeframe range between 720,000 and 1,100,000 acre-feet.

(B) For Central Valley Project and State Water Project water service contractors south of the Delta and north of the Tehachapi mountain range, if it is assumed that a water supply deficit is the difference between reliable water supplies, including maximum water contract deliveries, safe yield of groundwater, safe yield of local and surface supplies and long-term contracted water transfers, and water demands, including water demands from agriculture, municipal and industrial uses, and refuge contractors, the water supply deficit ranges between approximately 2,500,000 to 2,700,000 acre-feet.

(C)(i) The California Water Plan evaluated outcomes under current conditions under

198 combinations of climate and growth scenarios, projecting a range of urban and agricultural reliability into the future.

(ii) Reliability under this subparagraph is defined as the percentage of years in which demand is sufficiently met by supply.

(iii) Reliability across a range of futures within the San Joaquin Valley can be presented as—

(I) for the San Joaquin River Hydrologic Region, as defined in the California Water Plan—

(aa) urban supply reliability ranges between 90 and 100 percent, with a mean reliability across futures in the high 90th percentile; and

(bb) agricultural supply reliability ranges between 70 and 100 percent, with a mean reliability across futures in the mid-90th percentile; and

(II) for the Tulare Lake Hydrologic Region, as defined in the California Water Plan—

(aa) urban supply reliability ranges between 70 and 100 percent, with a mean reliability across futures in the mid-90th percentile; and

(bb) agricultural supply reliability ranges between 20 and 100 percent, with a mean reliability across futures in the low 70th percentile.

(17) Since the issuance of the biological opinions, recent studies have raised questions about the benefits to endangered salmonid populations from water pumping restrictions, including the following:

(A)(i) Expert panel reviews have concluded that instantaneous water velocities in the tidal Delta affect juvenile salmonids, not tidally average flows, as previously assumed.

(ii) Based on instantaneous water velocity modeling, water exports have a much smaller area of effect than was previously believed.

(B) Tagging studies conducted since 1993 (representing more than 28,000,000 fish) demonstrate that the proportion of Sacramento Basin origin Chinook salmon entrained into the pumping facilities (including prescreen losses) are on average less than  $\frac{1}{10}$  1 percent.

(C) Telemetric studies of Sacramento Basin and San Joaquin Basin origin juvenile Chinook salmon have not demonstrated any significant adverse effect from water exports on fish survival.

(18) Data of pumping activities at the Central Valley Project and State Water Project Delta pumps identify that, on average from Water Year 2009 to Water Year 2014, pumping activity takes 893 Delta smelt annually with an authorized take level of 5,003 Delta smelt annually, according to the biological opinion issued December 15, 2008.

(19) It is worth exploring whether there is a way to implement the biological opinions that would preserve the protections afforded endangered fish and simultaneously increase water deliveries to the Central Valley Project and State Water Project without weakening

environmental laws or protections.

(20) In 2014, better information exists than was known in 2008 concerning—

(A) conditions and operations that may or may not lead to high salvage events that jeopardize the fish populations; and

(B) what alternative management actions can be taken to avoid jeopardy.

(21) Alternative management strategies, such as trapping and barging juvenile salmon through the Delta, removing nonnative species, enhancing habitat, and monitoring fish movement and location in real-time, can contribute significantly to protecting and recovering these endangered fish species, and at potentially lower costs to water supplies.

(22) Resolution of fundamental policy questions concerning the extent to which application of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) affects the operation of the Central Valley Project and State Water Project is the responsibility of Congress.

### SEC. 3. DEFINITIONS.

In this Act:

(1) ASSISTANT ADMINISTRATOR.—The term “Assistant Administrator” means the Assistant Administrator for the National Marine Fisheries Service.

(2) COMMISSIONER.—The term “Commissioner” means the Commissioner of the Bureau of Reclamation.

(3) DELTA.—The term “Delta” means the Sacramento-San Joaquin Delta and the Suisun Marsh, as defined in sections 12220 and 29101 of the California Public Resources Code.

(4) DELTA SMELT.—The term “Delta smelt” means the fish species with the scientific name *Hypomesus transpacificus*.

(5) DIRECTOR.—The term “Director” means the Director of the United States Fish and Wildlife Service.

(6) EXPORT PUMPING RATES.—The term “export pumping rates” means the rates of pumping at the W.C. “Bill” Jones Pumping Plant and the Harvey O. Banks Pumping Plant, in the southern Delta.

(7) JEOPARDY.—The term “jeopardy” means to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.

(8) LISTED FISH SPECIES.—The term “listed fish species” means—

(A) listed salmonid species; and

(B) the Delta smelt.

(9) LISTED SALMONID SPECIES.—The term “listed salmonid species” means—

(A) natural origin steelhead;

(B) natural origin genetic spring run Chinook; and

(C) genetic winter run Chinook salmon.

(10) OMR.—The term “OMR” means the Old and Middle River in the Delta.

(11) OMR FLOW OF ^5000 CFS.—The term “OMR flow of ^5000 cfs” means Old and Middle River flow of negative 5,000 cubic feet per second as measured by—

(A) the smelt biological opinion; and

(B) the salmonid biological opinion.

(12) SALMONID BIOLOGICAL OPINION.—The term “salmonid biological opinion” means the biological opinion issued by the National Marine Fisheries Service on June 4, 2009, as amended, and any successor biological opinion.

(13) SMELT BIOLOGICAL OPINION.—The term “smelt biological opinion” means the biological opinion on the Long-Term Operational Criteria and Plan for coordination of the Central Valley Project and State Water Project issued by the United States Fish and Wildlife Service on December 15, 2008, as amended, and any successor biological opinion.

(14) STATE.—The term “State” means the State of California.

(15) STATE WATER PROJECT.—The term “State Water Project” means the water project described by California Water Code section 11550 et seq., and operated by the California Department of Water Resources.

## **TITLE I—ADJUSTING DELTA SMELT MANAGEMENT BASED ON INCREASED REAL-TIME MONITORING AND UPDATED SCIENCE**

### **SEC. 101. DEFINITION OF SECRETARY.**

In this title, the term “Secretary” means the Secretary of the Interior.

### **SEC. 102. REVISION OF INCIDENTAL TAKE LEVEL CALCULATION FOR DELTA SMELT TO REFLECT NEW SCIENCE.**

Not later than October 1, 2015, the Director, in cooperation with other Federal, State, and local agencies, shall use the best scientific and commercial data available to complete a review and, if warranted, a modification of the incidental take level in the smelt biological opinion that takes into account, among other considerations—

(1) salvage information available over at least the 18-year period ending on the date of enactment of this Act;

(2) updated or more recently developed statistical models;

(3) updated scientific and commercial data; and

(4) the most recent information regarding the environmental factors driving Delta smelt salvage.

1 SEC. 103. FACTORING INCREASED REAL-TIME  
2 MONITORING AND UPDATED SCIENCE INTO DELTA  
3 SMELT MANAGEMENT.

4 (a) Implementation of Alternative.—

5 (1) IN GENERAL.—The reasonable and prudent alternative described in the smelt  
6 biological opinion shall be implemented consistent with current best scientific and  
7 commercial data available.

8 (2) ADJUSTMENTS.—Implementation shall be adjusted accordingly as new scientific and  
9 commercial data is developed.

10 (b) Increased Monitoring to Inform Real-time Operations.—

11 (1) IN GENERAL.—Subject to the availability of funding, the Secretary, in consultation  
12 with Delta science partners, shall conduct additional surveys to carry out this section on an  
13 annual basis at the appropriate time of the year based on environmental conditions.

14 (2) ADMINISTRATION.—In carrying out this section, after seeking public input, the  
15 Secretary shall —

16 (A) use the most appropriate survey methods for the detection of Delta smelt to  
17 determine the extent that adult Delta smelt are distributed in relation to certain levels of  
18 turbidity, or other environmental factors that may influence salvage rate; and

19 (B) use results from appropriate survey methods for the detection of Delta smelt to  
20 determine how the Central Valley Project and State Water Project may be operated  
21 more efficiently to minimize salvage while maximizing rates of water export.

22 (3) ADDITIONAL MONITORING.—Effective during the period beginning on December 1,  
23 2014, and ending March 31, 2015, and in each successive December through March period,  
24 if suspended sediment loads enter the Delta from the Sacramento River and the suspended  
25 sediment loads appear likely to raise turbidity levels in Old River north of the export pumps  
26 from values below 12 Nephelometric Turbidity Units to values above 12 Nephelometric  
27 Turbidity Units, the Secretary shall—

28 (A) conduct daily monitoring using appropriate survey methods at locations,  
29 including the vicinity of Station 902, to determine the extent that adult Delta smelt are  
30 moving with turbidity toward the export pumps; and

31 (B) use results from the monitoring surveys at locations, including the vicinity of  
32 Station 902, to determine how increased trawling can inform daily real-time Central  
33 Valley Project and State Water Project operations to minimize salvage while  
34 maximizing rates of water export.

35 (c) Periodic Review of Monitoring.—At least once every 5 years or earlier if the Secretary  
36 determines appropriate, the Secretary shall—

37 (1) evaluate whether the monitoring program under subsection (b), combined with other  
38 monitoring programs for the Delta, is providing sufficient data to inform Central Valley  
39 Project and State Water Project operations to minimize salvage while maximizing rates of

water export; and

(2) determine whether the monitoring efforts should be changed in the short- or long-term to provide more useful data.

(d) Delta Smelt Distribution Study.—

(1) IN GENERAL.—Not later than January 1, 2016, subject to the availability of funding, the Secretary, in consultation with Delta science partners, shall implement new targeted sampling and monitoring specifically designed to understand Delta smelt abundance, distribution, and the types of habitat occupied by Delta smelt during all life stages.

(2) SAMPLING.—The Delta smelt distribution study required under paragraph (1) shall, at a minimum—

(A) include recording water quality and tidal data;

(B) be designed to understand Delta smelt abundance, distribution, habitat use, and movements throughout the Delta during all seasons;

(C) consider areas not routinely sampled by existing monitoring programs, including wetland channels, near-shore water, depths below 35 feet, and shallow-water; and

(D) use the most biologically appropriate survey methods, including sampling gear suited to the type of sampling or monitoring.

(e) Scientifically Supported Implementation of Old and Middle River Flow Requirements.—In implementing the provisions of the smelt biological opinion on reverse flow in the Old and Middle Rivers, the Secretary shall—

(1) consider the relevant provisions of the smelt biological opinion;

(2) manage reverse flow in Old and Middle Rivers, as prescribed by the smelt biological opinion, to minimize water supply reductions for the Central Valley Project and the State Water Project;

(3) document in writing any significant facts about real-time conditions relevant to the determinations of reverse OMR flow rates, including—

(A) whether targeted real-time fish monitoring in Old River pursuant to this section, including monitoring in the vicinity of Station 902, indicates that a significant increase in the salvage of Delta smelt is imminent; and

(B) whether near-term forecasts with available salvage models show under prevailing conditions that OMR flow of ^5000 cubic feet per second will cause significantly increased take of Delta smelt;

(4) show in writing that any determination to manage OMR reverse flow at rates less negative than ^5000 cubic feet per second is necessary to avoid a negative impact on the long-term survival of the Delta smelt, including an explanation of the data examined and the connection between the data and the choice made, after considering—

(A) the findings under paragraph (3);

(B) whether continued project operations over the remainder of the water year would exceed the incidental take level;

(C) the potential effects of entrainment on subsequent smelt abundance, including consideration of the distribution of the population throughout the Delta;

(D) the water temperature;

(E) other factors relevant to the determination; and

(F) whether any alternative measures could have a lesser water supply impact; and

(5) for any subsequent biological opinion, make the showing required under paragraph (4) for any determination to manage OMR reverse flow at rates less negative than the upper limit in the smelt biological opinion.

(f) Memorandum of Understanding.—

(1) IN GENERAL.—Not later than December 1, 2014, the Commissioner and the Director shall enter into a memorandum of understanding to ensure that the smelt biological opinion is implemented in a manner that minimizes water supply losses while complying with applicable laws (including regulations).

(2) CONSULTATION.—If the memorandum of understanding changes any procedures established under the smelt biological opinion, additional consultation shall not be required if—

(A) the changes do not have an adverse effect on listed fish species; and

(B) the implementation of the memorandum of understanding would not be a major change to implementation of the smelt biological opinion.

(3) TAKE STATEMENT.—Any change to the procedures established under the smelt biological opinion that does not create a new adverse effect to a listed fish species shall not alter application of the take exemption in the incidental take statement in the biological opinion under section 7(o)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1536(o)(2)).

## TITLE II—ENSURING SALMONID MANAGEMENT IS RESPONSIVE TO NEW SCIENCE

### SEC. 201. DEFINITION OF SECRETARY.

In this title, the term “Secretary” means the Secretary of Commerce.

### SEC. 202. REQUIRED SCIENTIFIC STUDIES.

(a) Trap and Barge Pilot Project to Increase Survival Through the Delta.—

(1) IN GENERAL.—The Assistant Administrator and the Commissioner, in collaboration with the United States Fish and Wildlife Service, the California Department of Fish and Wildlife, and other interested parties, shall design, permit, implement, and evaluate a pilot program to test the efficacy of an experimental trap and barge program to improve survivals of juvenile salmonids emigrating from the San Joaquin watershed through the Delta.

(2) PLAN.—

(A) IN GENERAL.—Not later than 30 days after the date of enactment of this Act, the



Assistant Administrator shall convene a working group of the relevant agencies and other interested parties to develop and execute a plan for the design, budgeting, implementation, and evaluation of the pilot program described in paragraph (1), using existing expertise on trap and barge programs as may be available.

(B) CONTENTS.—The plan shall describe—

(i) a schedule and budget for the program; and

(ii) the responsible parties for each element of the program.

(3) REVIEW.—The Assistant Administrator shall simultaneously—

(A) provide an opportunity for public review and comment on the pilot program; and

(B) ensure an expeditious independent peer review of the program to improve the rigor and likelihood of success of the program.

(4) PILOT PROGRAM.—After carrying out paragraph (2), the Assistant Administrator shall—

(A) complete the necessary design and evaluations of the pilot program; and

(B) seek such authorizations and permits as may be required for the prompt implementation and evaluation of the pilot program by the Assistant Administrator, the Commissioner, or such other parties as the Assistant Administrator and Commissioner determine appropriate.

(5) DURATION.—Subject to the availability of funding, the Assistant Administrator and the Commissioner shall—

(A) to the maximum extent practicable, commence implementation of the pilot program during calendar year 2015 or as soon thereafter as practicable; and

(B) conduct the pilot program for such period of time as is necessary to evaluate the efficacy of the program to improve survivals across a range of environmental conditions.

(6) ANNUAL REPORTS.—The Assistant Administrator and the Commissioner shall jointly report annually to the Committee on Environment and Public Works of the Senate and the Committee on Natural Resources of the House of Representatives on progress made in carrying out this subsection, including—

(A) estimated survival rates through the Delta for both juvenile salmonids that were barged through the Delta and juvenile salmonids that were not barged; and

(B) if survival rates are significantly higher for barged fish as compared to other outmigrating smolts, recommendations regarding broadening the pilot program and adjusting any relevant recommendations under section 203.

(b) Tagging Studies.—

(1) IN GENERAL.—The Assistant Administrator, in consultation with Delta science partners—

(A) shall carry out tagging studies, including acoustic telemetry and Passive

Integrated Transponder (PIT) tagging studies as appropriate, under which habitat, predators, flow conditions, or other factors are experimentally altered and the behavior and survival of tagged juvenile salmonids are observed; and

(B) may carry out additional studies may to aid in the understanding of Chinook salmon and steelhead abundance, distribution, and survival.

(2) SAMPLING.—Sampling under paragraph (1)(A) shall—

(A) include recording water quality and tidal data;

(B) be designed to aid in the understanding of salmonid abundance, distribution, and movements throughout the Bay Delta, including estimates of Delta survival from Knights Landing or from Mossdale to Chipps Island; and

(C) supplement, not supplant, ongoing acoustic tag and coded wire survival studies in the San Joaquin and Sacramento Rivers that the Assistant Administrator determines are crucial for trend monitoring.

## SEC. 203. PROCESS FOR ENSURING SALMONID MANAGEMENT IS RESPONSIVE TO NEW SCIENCE.

(a) In General.—The Commissioner and the Assistant Administrator shall implement, in accordance with this section, the reasonable and prudent alternative described in the salmonid biological opinion—

(1) to allow for and anticipate adjustments in operating criteria to reflect the best scientific and commercial data currently available; and

(2) to test and evaluate improvements in operations that will meet applicable regulatory requirements and enable improvements in water supply reliability.

(b) Annual Reviews of Certain Operating Criteria.—

(1) IN GENERAL.—Not later than December 31, 2015, and at least annually thereafter, subject to paragraph (4), the Commissioner, in consultation with and with the assistance of the Assistant Administrator, shall examine and identify—

(A) adjustments to the initiation of Action IV.2.3 of the salmonid biological opinion relating to negative OMR flows; and

(B) adjustments in the timing, triggers, or other operational details relating to the implementation of pumping restrictions under Action IV.2.1 of the salmonid biological opinion relating to the inflow to export requirements

(2) RECOMMENDATIONS.—Pursuant to the consultation and assessments carried out under paragraph (1), the Commissioner shall make recommendations to the Assistant Administrator on adjustments that, in the exercise of the adaptive management provisions of the salmonid biological opinion, can improve water supplies and are consistent with subsection (a) and other requirements of applicable law.

(3) IMPLEMENTATION.—The Commissioner shall implement adjustments described in paragraph (2) for which the conditions of subsection (c) are met.

(4) SUCCESSOR BIOLOGICAL OPINION.—The Assistant Administrator and the

Commissioner shall review and identify adjustments to water supply restrictions in any successor biological opinion to the salmon biological opinion to apply the requirements of this section to those water supply restrictions in cases in which there are references to Actions IV.2.1 and IV.2.3 of the salmonid biological opinion.

(c) Adjustments That Shall be Implemented.—On receiving the recommendations under subsection (b), the Assistant Administrator shall—

(1) evaluate the effects of the recommended adjustments on listed salmonid species; and

(2) recommend to the Commissioner adjustments for which—

(A) the net effect on listed salmonid species is equivalent to the net effect using the underlying criteria, taking into account both

(i) any efforts to minimize the effects of the adjustment; and

(ii) whatever actions or measures may be implemented in conjunction with the adjustments to ~~mitigate offset~~ the remaining effects of the adjustments pursuant to subsection (d); and

(B) the effects of the adjustments fall within the incidental take authorizations.

(d) Offsetting Species Survival Benefits From Other Measures.—

(1) IN GENERAL.—When examining opportunities to offset the potential adverse effect of adjustments under subsection ~~(C(A)(ii))~~ to operating criteria under this section, the Commissioner and the Assistant Administrator shall take into account the potential salmonid survival improvements that are likely to result from other measures that, if implemented in conjunction with the adjustments, would offset the adverse effects of the adjustments.

(2) ADMINISTRATION.—When considering offsetting measures, the Commissioner and the Assistant Administrator shall—

(A) consider the type, timing and nature of the adverse effects to specific species; and

(B) ensure that the measures provide equivalent overall benefits to the listed salmonid species in the aggregate, as long as the change in survival rates for each species remains consistent with the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) (including regulations).

(3) WATER DISTRICTS.—The offsetting measures may include actions implemented with the support of a substantial contribution from water districts that would benefit from the adjustments.

(e) Framework for Examining Opportunities to Minimize or Offset the Potential Adverse Effect of Adjustments to Operating Criteria.—Not later than December 31, 2015, and every 5 years thereafter, the Assistant Administrator, in consultation with the Director of the California Department of Fish and Wildlife, based on the best scientific and commercial data available and for each listed salmonid species, issue estimates of the increase in through-Delta survival the Secretary expects to be achieved—

(1) with export restrictions as specified by Reasonable and Prudent Action IV.2.3 of the

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salmonid biological opinion as compared to limiting OMR flow to a fixed rate of ^5000 cubic feet per second within the time period Action IV.2.3 of the salmonid biological opinion is applicable, based on a given rate of San Joaquin River inflow to the Delta and holding other relevant factors constant;

(2) with San Joaquin River inflow to export restrictions specified within Reasonable and Prudent Action IV.2.1 of the salmonid biological opinion as compared to in the export restrictions in the April and May period imposed by the State Water Resources Control Board decision D-1641, based on a given rate of San Joaquin River inflow to the Delta and holding other relevant factors constant;

(3) by a trap-and-barge program based on the experience of other systems to the extent the systems are comparable, and the study described in section 202, as that information becomes available;

(4) through physical habitat restoration improvements;

(5) through predation control programs;

(6) through temporary barriers, the Cross Channel Gates, and other projects affecting flow in the Delta;

(7) by salvaging fish that may be entrained near the entrance to Clifton Court Forebay; and

(8) by any other management measures that may provide equivalent or better benefits for listed salmonid species with improvements to water supplies.

(f) Survival Estimates to Be Quantitative to the Maximum Extent Feasible.—

(1) IN GENERAL.—To the maximum extent feasible, the Assistant Administrator shall make the survival estimates and determinations described in subsection (e) quantitatively, such as a range of percentage increases in through-Delta survival that could result from the management measures.

(2) QUALITATIVE SURVIVAL ESTIMATES.—If the Assistant Administrator cannot provide a quantitative survival estimate for the species resulting from a particular management measure, the Assistant Administrator shall provide qualitative survival estimates that are based on the best available science.

(3) RANKING.—If the Assistant Administrator provides qualitative survival estimates for the species resulting from 1 or more management measures, the Secretary shall, to the maximum extent feasible, rank the management measures described in subsection (e) in terms of the most likely expected contribution to increased through-Delta survival relative to the other measures.

(4) COMPARISON OF BENEFITS.—If at the time the Assistant Administrator conducts the analysis under subsection (b), the Secretary has not issued the estimates of increased through-Delta survival benefits from different management measures pursuant to subsection (e), the Secretary shall compare the benefits to the species from different management measures based on the best scientific and commercial data available at the time.

(g) Comparison of Adverse Consequences for Alternative Management Measures of Equal Benefit to the Salmon.—

(1) DEFINITIONS.—In this subsection:

(A) EQUIVALENT ALTERNATIVE MEASURE.—The term “equivalent alternative measure” means an alternative management measure or combination of alternative management measures described in paragraph (2).

(B) EQUIVALENT EXISTING MEASURE.—The term “equivalent existing measure” means 1 or more existing measures described in subparagraph (A), (B), (C), or (D) of paragraph (2).

(C) EQUIVALENT INCREASE IN THROUGH-DELTA SURVIVAL RATES FOR LISTED SALMONID SPECIES.—The term “equivalent increase in through-Delta survival rates for listed salmonid species” means an increase in through-Delta survival rates that is equivalent when considering the change in through-Delta survival rates for the listed salmonid species in the aggregate, and not necessarily the same change for each individual species, as long as the change in survival rates for each species remains consistent with the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) (including implementing regulations).

(2) ALTERNATIVE MANAGEMENT MEASURES.—As part of the reviews of operating criteria pursuant to subsection (b), the Assistant Administrator shall determine whether any alternative management measures or combination of alternative management measures described in paragraphs (3) through (8) of subsection (e) would provide an increase in through-Delta survival rates for listed salmonid species that is equivalent to the increase in through-Delta survival rates for listed salmonid species from the following:

(A) With export restrictions as specified by Action IV.2.3 of the salmonid biological opinion, as compared to limiting OMR flow to a fixed rate of ^5000 cubic feet per second within the time period in Action IV.2.3 of the salmonid biological opinion as applicable.

(B) With export restrictions as specified by Action IV.2.3 of the salmonid biological opinion, as compared to a modification of Action IV.2.3 of the salmonid biological opinion that would provide additional water supplies, other than that described in subparagraph (A).

(C) With San Joaquin River inflow to export restrictions specified within Action IV.2.1 of the salmonid biological opinion, as compared to the export restrictions in the April/May period imposed by the State Water Resources Control Board decision D-1641.

(D) With San Joaquin River inflow to export restrictions specified within Action IV.2.1 of the salmonid biological opinion, as compared to a modification of Action IV.2.1 that would provide additional water supplies, other than that described in subparagraph (C).

(3) EQUIVALENT ALTERNATIVE MEASURES.—If the Assistant Administrator identifies an equivalent alternative measure pursuant to paragraph (2), the Assistant Administrator shall determine whether—

(A) it is technically feasible and within Federal jurisdiction to implement the equivalent alternative measure; and

(B) the adverse consequences of doing so are less than the adverse consequences of the equivalent existing measure, including a concise evaluation of the adverse consequences to other affected interests.

(4) OPERATING CRITERIA.—If the Assistant Administrator makes the findings in subparagraphs (A) and (B) of paragraph (3), the Assistant Administrator and the Commissioner shall adjust the operating criteria in the salmonid biological opinion pursuant to this subsection to implement the equivalent alternative measure in place of the equivalent existing measure in order to increase water supplies to the maximum extent practicable while maintaining a net combined effect of equivalent through-Delta survival rates for the listed salmonid species.

(h) Tracking Adverse Effects Beyond the Range of Effects Accounted for in the Salmonid Biological Opinion and Coordinated Operation With Smelt Biological Opinion.—

(1) IN GENERAL.—Among the adjustments to the operational criteria considered through the adaptive management process under this section, the Assistant Administrator and the Commissioner shall—

(A) evaluate the effect on listed salmonid species and water supply of the potential adjustment to operational criteria described in subparagraph (B); and

(B) consider requiring that before all or part of the provisions of Action IV.2.1 or IV.2.3 of the salmonid biological opinion are imposed in any specific instance, the Assistant Administrator show that the implementation of those provisions in that specific instance is necessary to avoid additional adverse effects on listed salmonid species beyond the range of effects analyzed and accounted for in the salmonid biological opinion.

(2) OPERATIONAL CRITERIA.—The Assistant Administrator, the Director, and the Commissioner, in coordination with State officials as appropriate, shall establish operational criteria to coordinate management of OMR flows under the smelt biological opinion and the salmonid biological opinion, to take advantage of opportunities to provide additional water supplies from the coordinated implementation of the smelt biological opinion and the salmonid biological opinion.

(i) Real-time Monitoring and Management.—

(1) IN GENERAL.—The Assistant Administrator and the Commissioner shall, through the adaptive management provisions of the National Marine Fisheries Service of the salmonid biological opinion, analyze whether date-certain triggers that limit OMR reverse flow to ^5000 cubic feet per second could be adjusted to instead use real-time migration information on salmonids.

(2) IMPLEMENTATION.—If the analysis shows that the use of real-time information to trigger OMR flow limitations would improve water supply without causing significant adverse effects to Winter-run Chinook salmon, the real-time management triggers shall be implemented.

## SEC. 204. PILOT PROGRAM TO PROTECT NATIVE ANADROMOUS FISH IN STANISLAUS RIVER.

(a) Definitions.—In this section:

(1) DISTRICTS.—The term “districts” means—

(A) the Oakdale Irrigation District; and

(B) the South San Joaquin Irrigation District.

(2) PILOT PROGRAM.—The term “pilot program” means the nonnative predator removal pilot program established under this section.

(b) Establishment.—The Assistant Administrator, in consultation with the Director and the head of the California Department of Fish and Wildlife, shall, subject to the availability of funding, develop and conduct a pilot nonnative predator fish removal program to remove from the areas in and around the Delta, including the Stanislaus River—

(1) nonnative striped bass;

(2) nonnative smallmouth bass;

(3) nonnative largemouth bass;

(4) nonnative black bass; and

(5) other nonnative predator fish.

(c) Requirements.—The pilot program shall—

(1) be scientifically based;

(2) include methods to quantify, by, among other methods, evaluating the number of juvenile anadromous fish that migrate past the rotary screw trap located at Caswell—

(A) the number and size of predator fish removed each year from the program area;

(B) the impact of the removal on the overall abundance of predator fish in the program area; and

(C) the impact of the removal on the populations of juvenile anadromous fish found in the Stanislaus River and elsewhere;

(3) among other methods, use wire fyke trapping, portable resistance board weirs, and boat electrofishing, which are among the most effective predator collection techniques that minimize effects to native anadromous fish;

(4) be developed by not later than 180 days after the date of enactment of this Act, including the application for all necessary scientific research and species enhancement permits under section 10(a)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)) for the performance of the pilot program;

(5) be implemented on the first business day of the calendar year following the date of issuance of all necessary scientific research and species enhancement permits and funding needed to commence the pilot program; and

(6) be implemented for a period of 7 consecutive calendar years.

(d) Management.—

(1) IN GENERAL.—The Assistant Administrator may and is encouraged to enter into

1 agreements with interested local water districts to jointly develop, implement and evaluate  
2 the pilot program.

3 (2) ADMINISTRATION.—Parties to an agreement under paragraph (1) are encouraged—

4 (A) to work collaboratively to ensure the performance of the pilot program; and

5 (B) to discuss and agree on, among other elements, changes in the structure,  
6 management, personnel, techniques, strategy, data collection, reporting, and conduct of  
7 the pilot program.

8 (e) Implementation.—

9 (1) IN GENERAL.—On agreement between the Assistant Administrator and any  
10 participating districts, the pilot program may be carried out by—

11 (A) personnel employed by the districts;

12 (B) qualified private contractors hired by the districts;

13 (C) personnel employed by, on loan to, or otherwise assigned to the National Marine  
14 Fisheries Service; or

15 (D) any combination of individuals and entities described in subparagraphs (A)  
16 through (C).

17 (2) PARTICIPATION BY THE NATIONAL MARINE FISHERIES SERVICE.—

18 (A) IN GENERAL.—If the districts elect pursuant to paragraph (1) to conduct the pilot  
19 program using the personnel employed, or qualified private contractors hired, by the  
20 districts, the Commissioner may assign an individual described in paragraph (1)(C) to  
21 be present for any field activity carried out under the pilot program to ensure  
22 compliance with subsection (c).

23 (B) COSTS.—Subject to subsection (f), the districts shall pay 100 percent of the cost  
24 of participation by any individual under subparagraph (A).

25 (3) TIMING OF ELECTION.—The districts shall—

26 (A) make an election under paragraph (1) with respect to the following calendar year  
27 for each calendar year during which the pilot program is conducted; and

28 (B) notify the Assistant Administrator of that election by not later than October 15  
29 of the calendar year during which the election is made.

30 (f) Funding.—

31 (1) ANNUAL FUNDING.—

32 (A) IN GENERAL.—The Commissioner, the Assistant Administrator, and the  
33 participating districts shall develop a budget and funding plan for the pilot project that  
34 will allocate costs appropriately among the participating entities.

35 (B) NOTIFICATION BY COMMISSIONER.—Not later than December 1 of each calendar  
36 year during which the pilot program is conducted, the Commissioner shall submit to  
37 the districts an estimate of the cost to be incurred by the Bureau of Reclamation under  
38 the pilot program during the following calendar year, if any, including the cost of any



1 data collection and publication under subsection (g).

2 (C) FAILURE TO PAY.—If an amount equal to the amount described in an estimate  
3 under subparagraph (B) is not provided to the Assistant Administrator by the districts  
4 by not later than December 31 of the applicable calendar year—

5 (i) the Assistant Administrator shall have no obligation to conduct any activity  
6 under the pilot program that is otherwise scheduled to be carried out by the  
7 Assistant Administrator; and

8 (ii) the districts shall be prohibited from conducting any activity under the pilot  
9 program until the date on which full payment is made by the districts.

10 (2) ACCOUNTING.—

11 (A) IN GENERAL.—Not later than September 1 of each calendar year during which  
12 the pilot program is conducted, the Assistant Administrator shall provide to the  
13 participating entities an accounting of the expenses of the Assistant Administrator  
14 under the pilot program during the preceding calendar year.

15 (B) ESTIMATE DISCREPANCIES.—

16 (i) SHORTFALL.—If the estimated amount paid by the districts under paragraph  
17 (1) for a calendar year was less than the actual costs incurred by the Assistant  
18 Administrator—

19 (I) the districts shall pay to the Assistant Administrator an amount equal to  
20 the difference by not later than September 30 of that calendar year; and

21 (II) the Assistant Administrator shall not be required to carry out any  
22 activity otherwise scheduled under the pilot program.

23 (ii) EXCESS.—If the estimated amount paid by the districts under paragraph (1)  
24 for a calendar year was greater than the actual costs incurred by the Assistant  
25 Administrator, a credit shall be provided to the districts, which shall be deducted  
26 from the estimated payment required to be paid by the districts for the following  
27 calendar year.

28 (g) Data Reporting and Evaluation.—

29 (1) IN GENERAL.—Not later than the 15th day of each month during which the pilot  
30 program is conducted, the Assistant Administrator shall publish on the website of the  
31 National Marine Fisheries Service a tabular summary of the raw data collected under the  
32 pilot program during the preceding month.

33 (2) REPORT.—Not later than June 30 of the calendar year following completion of the  
34 pilot program, the Assistant Administrator and the districts shall jointly submit a report for  
35 peer review that—

36 (A) discusses the findings and conclusions of the pilot program;

37 (B) synthesizes the data described in paragraph (1); and

38 (C) makes recommendations for additional studies and activities.

39 (h) Permit Process.—

(1) IN GENERAL.—Not later than 1 year after the date of filing of an application by the Assistant Administrator and the districts, the Secretary of the Interior, the Secretary of Commerce, or both, as applicable, shall issue all necessary scientific research and species enhancement permits under section 10(a)(1) of the Endangered Species Act (16 U.S.C. 1539(a)(1)) for the performance of the pilot program.

(2) NAMED PARTIES.—Each permit under paragraph (1) shall be issued in the name of the Assistant Administrator and the participating districts.

(3) PRIVATE CONTRACTORS.—The districts may delegate the authority under this subsection to any qualified private contractor retained in accordance with subsection (e)(1)(B).

(i) Emergency Environmental Reviews.—To expedite the environmentally beneficial pilot program established under this section for the conservation of threatened and endangered species, the Secretary of the Interior shall consult with the Director of the Council on Environmental Quality in accordance with section 1506.11 of title 40, Code of Federal Regulations (or a successor regulation), to develop alternative arrangements to achieve compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) for purposes of this section.

(j) Sunset.—The authorities provided by this section shall expire on the date that is 7 years after the date of commencement of the pilot program.

## SEC. 205. CALFED INVASIVE SPECIES PILOT PROJECTS IN THE SACRAMENTO-SAN JOAQUIN BAY DELTA AND ITS TRIBUTARIES.

(a) Findings.—Congress finds the following:

(1) The Sacramento-San Joaquin Bay Delta and its tributaries—

(A) is 1 of the largest and most diverse estuaries in the United States;

(B) is a natural treasure and a vital link in the water system of California;

(C) has native biodiversity important to the ecological and economic systems of California, including water deliveries to agriculture, municipalities, and the environment and fisheries industries; and

(D) has river tributaries important for rearing of salmon and steelhead smolts, which experience a high level of predation from nonnative species.

(2) Past, present, and future introductions of invasive species are and will be a major factor in the decline of native pelagic and anadromous endangered or threatened species in the Sacramento-San Joaquin Bay Delta and its tributaries.

(3) More than 250 nonnative aquatic and plant species have been introduced into the Delta and its tributaries, of which at least 185 species have become established and have altered the ecosystem of the Sacramento-San Joaquin Bay Delta watershed.

(4) The Bay Delta Conservation Plan, the Recovery Plan for the Evolutionary Significant Units of Sacramento River Winter-run Chinook Salmon and Central Valley Spring-run

Chinook Salmon and the Distinct Population Segment of the Central Valley Steelhead, the Recovery Plan for the Sacramento-San Joaquin Delta Native Fishes, and the multiple 5-year reviews of those plans all highlight that introduced nonnative invasive species are a significant factor in the decline of native fish species.

(5) Those nonnative species, which include invasive aquatic vegetation, predators, and competitors, directly or indirectly cause biological stress for pelagic and anadromous endangered or threatened fish species in the Sacramento-San Joaquin Bay Delta and its tributaries.

(6) If threats by nonnative species to native fish species are not addressed, there is a high probability that native species of the pelagic and anadromous community of the Sacramento-San Joaquin Bay Delta watershed will go extinct.

(7) The Calfed Bay-Delta Authorization Act (title I of Public Law 108–361; 118 Stat. 1681) authorized a program to prevent, control, and eradicate invasive species, but as of the date of enactment of this Act, the program has not been implemented.

(8) A focused pilot program needs to be conducted within the Delta and river tributaries to reduce threats to native listed pelagic and anadromous species by nonnative species.

(9) Reducing nonnative stressors on native listed pelagic and anadromous species will contribute to both native listed pelagic and anadromous species recovery and lowering the impact on downstream water users as those native listed pelagic and anadromous species recover.

(b) Pilot Projects to Implement Calfed Invasive Species Program.—

(1) IN GENERAL.—Not later than January 1, 2016, the Secretary of the Interior, in collaboration with the Secretary of Commerce and the Director of the California Department of Fish and Wildlife, shall begin pilot projects to implement the invasive species program, including prevention, control, and eradication activities, as authorized under section 103(d)(6)(A)(iv) of the Calfed Bay-Delta Authorization Act (118 Stat. 1690; Public Law 108–361).

(2) REQUIREMENTS.—The pilot projects shall—

(A) seek to reduce invasive aquatic vegetation, predators, and other competitors that are major factors in the decline of native listed pelagic and anadromous species that occupy the Sacramento and San Joaquin Rivers and their tributaries and the Sacramento-San Joaquin Bay-Delta; and

(B) address how to remove, reduce, or control the effects of species including Asiatic clams, silversides, gobies, Brazilian water weed, largemouth bass, smallmouth bass, striped bass, crappie, bluegill, white and channel catfish, and brown bullheads.

(3) PHASES.—The activities of the Secretary of the Interior under this subsection shall consist of the following phases:

(A) PHASE 1.—The Secretary of the Interior shall convene a panel of experts, including experts recommended by the State—

(i) to identify the nonnative species having the greatest impact on the viability of native pelagic and anadromous native listed species;

(ii) to identify the nonnative species for which actions to reduce or control the population is determined to be possible; and

(iii) to design a study to reduce the nonnative species identified in clauses (i) and (ii) and prepare a cost estimate to implement this study.

(B) PHASE 2.—The Secretary of the Interior shall test the general viability of nonnative reduction methods, including either direct predator removal or alteration of channel conditions, or a combination of those methods, through pilot projects at multiple sites in addition to the projects on the Stanislaus River pursuant to section 204, including known hotspots of predator aggregation or activity, such as—

(i) Clifton Court Forebay;

(ii) Central Valley Project intakes;

(iii) Head of Old River;

(iv) Georgiana Slough;

(v) Old and Middle Rivers;

(vi) Franks Tract;

(vii) Paintersville Bridge;

(viii) individual river tributaries important for wild populations of anadromous species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(ix) human-made submerged structures; and

(x) salvage release sites.

(C) PHASE 3.—If feasible, the Secretary of the Interior shall implement nonnative reduction methods at a larger number of sites, incorporating information learned during the first and second phases.

(4) DATA COLLECTION.—The Secretary of the Interior shall collect data associated with the implementation of the projects described in this subsection, and shall specifically collect data on the impact on—

(A) pelagic and anadromous species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(B) water quality; and

(C) water supply.

(5) REVISIONS.—After assessing the data collected as described in paragraph (4), the Secretary of the Interior, in collaboration with the Secretary of Commerce and the Director of the California Department of Fish and Wildlife, shall, if appropriate, annually recommend revisions to the reasonable and prudent alternative contained in the salmonid biological opinion and the smelt biological opinion, or other administrative Federal requirements governing the operation of the Central Valley Project and the State Water Project, that are likely to produce additional fishery, water quality, and water supply benefits.

(c) Implementation.—The Secretary of the Interior shall implement the Calfed program described in subsection (b) for at least a period of 7 consecutive years beginning on the date of implementation.

(d) Reporting Requirements.—The Secretary of the Interior shall provide to the Committee on Environment and Public Works of the Senate and the Committee on Natural Resources of the House of Representatives—

(1) not later than January 1, 2016, a report containing a description of the projects described in subsection (b), including the application for all necessary scientific research and species enhancement permits under section 10(a)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)), and for the performance of the Calfed invasive species program;

(2) on the completion of Phase 1 as described in subsection (b)(3)(A), a report describing the implementation and cost effectiveness of that phase;

(3) not later than 2 years after the project under this subsection begins, a report describing—

(A) the progress of the eradication of the nonnative species in the Delta and its tributaries;

(B) how those efforts have helped the Recovery Plans for endangered and threatened anadromous and pelagic species in the Delta watershed; and

(C) the associated cost effectiveness of each control measure; and

(4) after the pilot projects are complete, a report describing the results of the program, including recommendations on whether the program should be continued, how the program may be taken to full scale in the most cost-effective manner, and how a mitigation program for the Central Valley Project allowable under section 10(a)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)) could be implemented.

(e) Emergency Environmental Reviews.—To expedite the environmentally beneficial program for the conservation of threatened and endangered species carried out under this section, the Secretary of the Interior shall consult with the Council on Environmental Quality in accordance with section 1506.11 of title 40, Code of Federal Regulations (including successor regulations) to develop alternative arrangements for the program to comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

## SEC. 206. MARK FISHERY AND HARVEST MANAGEMENT.

(a) In General.—To minimize the impact of harvest and project operations on salmonids, contribute to recovery of stocks of endangered or threatened species, improve management of fish stocks of both hatchery and natural origins, and to minimize risk of a natural origin fall Chinook listing under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), not later than 60 days after the date of enactment of this Act, the Assistant Administrator, in partnership with the Director of the California Department of Fish and Wildlife and persons responsible for funding Central Valley hatcheries, shall convene an independent science panel to follow up on the 2012 recommendations of the California Hatchery Scientific Review Group by providing an

assessment of costs and benefits associated with marking, with tagging, and with a program that combines marking and tagging Central Valley hatchery produced fall Chinook.

(b) Administration.—The Assistant Administrator shall ensure that the independent science panel—

(1) includes an appropriate number of scientific experts as determined and appointed by the Assistant Administrator, and an equal number of scientific experts selected by entities responsible for funding California salmon mitigation hatcheries;

(2) considers and gives equal weight to both inland and ocean monitoring and management needs, including harvest; and

(3) completes the review by December 31, 2015.

(c) Implementation.—Not later than October 1, 2018, the Assistant Administrator shall assess and implement harvest management strategies to provide better protection for sensitive Chinook stocks while still allowing for harvest of hatchery fall Chinook.

## SEC. 207. NEW ACTIONS TO BENEFIT CENTRAL VALLEY SALMONIDS.

Not later than March 1, 2016, under similar terms and conditions as successful United States Fish and Wildlife Service programs on Clear Creek and Battle Creek, the Director, in collaboration with the Director of the California Department of Fish and Wildlife, the Commissioner of the Bureau of Reclamation, or both, shall issue necessary permits and otherwise facilitate the deployment of temporary in-river structures—

(1) to protect and grow natural origin spring Chinook populations by blocking access to hatchery origin fall Chinook; and

(2) to prevent hatchery origin Chinook salmon and steelhead from reaching spawning grounds where the species will compete for spawning with natural origin fish listed under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

## TITLE III—OPERATIONAL FLEXIBILITY AND DROUGHT RELIEF

### SEC. 301. FINDINGS.

Based on the congressional findings in section 2, Congress finds that it is appropriate and necessary for Federal agencies to exercise the maximum amount of flexibility provided to the agencies under applicable laws (including regulations) to maximize delivery of water supplies while providing the same or better levels of protection for species as in effect on the date of enactment of this Act.

### SEC. 302. DEFINITIONS.

In this title:

(1) CENTRAL VALLEY PROJECT.—The term “Central Valley Project” has the meaning given the term in section 3403 of the Central Valley Project Improvement Act (Public Law

102–575; 106 Stat. 4707).

(2) KLAMATH PROJECT.—The term “Klamath Project” means the Bureau of Reclamation project in the States of California and Oregon, as authorized under the Act of June 17, 1902 (32 Stat. 388, chapter 1093).

(3) RECLAMATION PROJECT.—The term “Reclamation Project” means a project constructed pursuant to the authorities of the reclamation laws and whose facilities are wholly or partially located in the State.

(4) SECRETARIES.—The term “Secretaries” means—

(A) the Administrator of the Environmental Protection Agency;

(B) the Secretary of Agriculture;

(C) the Secretary of Commerce; and

(D) the Secretary of the Interior.

## SEC. 303. OPERATIONAL FLEXIBILITY IN TIMES OF DROUGHT.

(a) Water Supplies.—

(1) IN GENERAL.—In response to a declaration of a state of drought emergency by the Governor of California and for the period of time such a drought declaration remains in effect, the Secretaries shall provide the maximum quantity of water supplies practicable to Central Valley Project agricultural, municipal and industrial, and refuge service and repayment contractors, State Water Project contractors, and any other Indian tribe, locality, or municipality in the State, by approving, consistent with applicable laws (including regulations), projects and operations to provide additional water supplies as quickly as practicable based on available information to address the emergency conditions.

(2) APPLICATION.—Paragraph (1) applies to projects or operations involving the Klamath Project if the projects or operations would benefit Federal water contractors in the State.

(b) Administration.—In carrying out subsection (a), the Secretaries shall, consistent with applicable laws (including regulations)—

(1) issue all necessary permit decisions under the authority of the Secretaries not later than 30 days after the date on which the Secretaries receive a completed application from the State to place and use temporary barriers or operable gates in Delta channels to improve water quantity and quality for the State Water Project and the Central Valley Project south of Delta water contractors and other water users, on the condition that the barriers or operable gates—

(A) provide benefits for species protection and in-Delta water user water quality; and

(B) are designed so that formal consultations under section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) are not necessary;

(2) require the Director of the United States Fish and Wildlife Service and the Commissioner of Reclamation—

(A) to complete, not later than 30 days after the date on which the Director or the Commissioner receives a complete written request for water transfer associated with voluntarily fallowing nonpermanent crops in the State, all requirements under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) necessary to make final permit decisions on the request; and

(B) to grant any water transfer request described in subparagraph (A) to maximize the quantity of water supplies available for nonhabitat uses, on the condition that the fallowing and associated water transfer are in compliance with applicable Federal laws (including regulations);

(3) adopt a 1:1 inflow to export ratio for the increment of increased flow of the San Joaquin River, as measured as a 3-day running average at Vernalis during the period beginning on April 1, and ending on May 31, resulting from voluntary transfers and exchanges of water supplies, on the condition that a proposed transfer or exchange under this paragraph may only proceed if the Secretary of the Interior determines that—

(A) the environmental effects of the proposed transfer or exchange are consistent with effects permissible under applicable law (including regulations); and

(B) Delta conditions are suitable to allow movement of the transfer water through the Delta consistent with the permitted rights of the Commissioner of Reclamation; and

(4) provide additional priority for eligible WaterSMART projects that address drought conditions, including projects that—

(A) provide emergency drinking and municipal water supplies to localities in a quantity necessary to meet minimum public health and safety needs;

(B) prevent the loss of permanent crops;

(C) minimize economic losses resulting from drought conditions; or

(D) provide innovative water conservation tools and technology for agriculture and urban water use that can have immediate water supply benefits.

(c) Accelerated Project Decision and Elevation.—

(1) IN GENERAL.—On request by the Governor of the State, the heads of Federal agencies shall use the expedited procedures under this subsection to make final decisions relating to a Federal project or operation if the purpose of the project or operation is to provide relief for emergency drought conditions pursuant to subsections (a) and (b).

(2) REQUEST FOR RESOLUTION.—

(A) IN GENERAL.—On request by the Governor of the State, the head of a Federal agency referenced in paragraph (1), or the head of another Federal agency responsible for carrying out a review of a project, as applicable, the Secretary of the Interior shall convene a final project decision meeting with the heads of all relevant Federal agencies to decide whether to approve a project to provide relief for emergency drought conditions.

(B) MEETING.—The Secretary of the Interior shall convene a meeting requested



under subparagraph (A) not later than 7 days after the date on which the meeting request is received.

(3) NOTIFICATION.—On receipt of a request for a meeting under paragraph (2), the Secretary of the Interior shall notify the heads of all relevant Federal agencies of the request, including information on the project to be reviewed and the date of the meeting.

(4) DECISION.—Not later than 10 days after the date on which a meeting is requested under paragraph (2) and subject to subsection (e)(2), the head of the relevant Federal agency shall issue a final decision on the project.

(5) MEETING CONVENED BY SECRETARY.—The Secretary of the Interior may convene a final project decision meeting under this subsection at any time, at the discretion of the Secretary, regardless of whether a meeting is requested under paragraph (2).

(d) Application.—To the extent that a Federal agency, other than the agencies headed by the Secretaries, has a role in approving projects described in subsections (a) and (b), this section shall apply to those Federal agencies.

(e) Limitation.—Nothing in this section authorizes the heads of applicable Federal agencies to approve projects—

(1) that would otherwise require congressional authorization; or

(2) without following procedures required by applicable law.

(f) 2015 Drought Plan.—The Secretary of Commerce and the Secretary of the Interior, in consultation with appropriate State officials, shall develop a drought operations plan for calendar year 2015 that is consistent with this section and other provisions of this Act intended to provide additional water supplies that could be of assistance during the drought in effect as of the date of enactment of this Act.

## SEC. 304. OPERATION OF CROSS-CHANNEL GATES.

(a) In General.—The Secretary of Commerce and the Secretary of the Interior shall jointly—

(1) authorize and implement activities to ensure that the Delta Cross Channel Gates remain open to the maximum extent practicable using findings from the United States Geological Survey on diurnal behavior of juvenile salmonids, timed to maximize the peak flood tide period and provide water supply and water quality benefits for the duration of the drought emergency declaration of the State, consistent with operational criteria and monitoring criteria developed pursuant to the Order Approving a Temporary Urgency Change in License and Permit Terms in Response to Drought Conditions of the California State Water Resources Control Board, effective January 31, 2014 (or a successor order) and other authorizations associated with that order;

(2) with respect to the operation of the Delta Cross Channel Gates described in paragraph (1), collect data on the impact of that operation on—

(A) species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(B) water quality; and

(C) water supply;

(3) consistent with knowledge gained from activities carried out during 2014, collaborate with the California Department of Water Resources to install a deflection barrier at Georgiana Slough in coordination with Delta Cross Channel Gate diurnal operations to protect migrating salmonids;

(4) evaluate the combined salmonid survival in light of activities carried out pursuant to paragraphs (1) through (3) in deciding how to operate the Delta Cross Channel gates to enhance salmonid survival and water supply benefits; and

(5) not later than May 15, 2015, submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives a written report on the extent to which the gates are able to remain open.

(b) Recommendations.—

(1) IN GENERAL.—After assessing the information collected under subsection (a), the Secretary of the Interior shall recommend revisions to the operation of the Delta Cross-Channel Gates, to the Central Valley Project, and to the State Water Project, including, if appropriate, any reasonable and prudent alternative contained in the salmonid biological opinion that is likely to produce fishery, water quality, and water supply benefits.

(2) COORDINATION.—The Secretary of the Interior shall coordinate with the State Water Resources Control Board to seek consistent direction for the operation of the Delta Cross-Channel Gates under Federal and State law, including Water Right Decision 1641.

## SEC. 305. FLEXIBILITY FOR EXPORT/INFLOW RATIO.

In response to the declaration of a state of drought emergency by the Governor of the State and for the period of time such a drought declaration remains in effect, the Commissioner of the Bureau of Reclamation shall continue to vary the averaging period of the Delta Export/Inflow ratio pursuant to the California State Water Resources Control Board decision D1641, approved in the March 2014 Temporary Urgency Change Order—

(1) to operate to a 35 percent Export/Inflow ratio with a 3 day averaging period on the rising limb of a Delta inflow hydrograph; and

(2) to operate to a 14 day averaging period on the falling limb of the Delta inflow hydrograph.

## SEC. 306. EMERGENCY ENVIRONMENTAL REVIEWS.

To minimize the time spent carrying out environmental reviews and to deliver water quickly that is needed to address emergency drought conditions in the State during the duration of an emergency drought declaration, the head of each applicable Federal agency shall, in carrying out this Act, consult with the Council on Environmental Quality in accordance with section 1506.11 of title 40, Code of Federal Regulations (including successor regulations), to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) during the emergency.

## SEC. 307. PRIORITIZING STATE REVOLVING FUNDS

## DURING DROUGHTS.

(a) In General.—This section shall apply for each of the fiscal years during which an emergency drought declaration of the State is in effect.

(b) Action by Administrator.—The Administrator of the Environmental Protection Agency, in implementing the processes and programs under the State water pollution control revolving funds established under title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) and the State drinking water treatment revolving loan funds established under section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12), shall, for those projects that are eligible to receive assistance under section 603 of the Federal Water Pollution Control Act (33 U.S.C. 1383) or section 1452(a)(2) of the Safe Drinking Water Act (42 U.S.C. 300j–12(a)(2))—

(1) issue a determination of waivers within 30 days of the conclusion of the informal public comment period pursuant to section 436(c) of title IV of division G of Public Law 113–76; and

(2) authorize, at the request of the State, 40-year financing for assistance under section 603(d)(2) of the Federal Water Pollution Control Act (33 U.S.C. 1383(d)(2)) or section 1452(f)(2) of the Safe Drinking Water Act (42 U.S.C. 300j–12(f)(2)).

(c) Effect of Section.—Nothing in this section authorizes the Administrator of the Environmental Protection Agency to modify any funding allocation, funding criteria, or other requirement relating to State water pollution control revolving funds established under title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) and the State drinking water treatment revolving loan funds established under section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12) for any other State.

## SEC. 308. INCREASED FLEXIBILITY FOR REGULAR PROJECT OPERATIONS.

The Secretaries shall, consistent with applicable laws (including regulations)—

(1) to the maximum extent practicable, based on the availability of water and without causing land subsidence or violating water quality standards—

(A) help meet the contract water supply needs of Central Valley Project refuges through the improvement or installation of water conservation measures, water conveyance facilities, and wells to use groundwater resources, on the condition that those activities may only be accomplished by using funding made available under the Water Assistance Program or the WaterSMART program of the Department of the Interior; and

(B) make available to Central Valley Project contractors a quantity of Central Valley Project surface water obtained from the activities carried out under subparagraph (A);

(2) contingent on funding, in coordination with the Secretary of Agriculture, enter into an agreement with the National Academy of Sciences to conduct a comprehensive study, to be completed not later than 1 year after the date of enactment of this Act, on the effectiveness and environmental impacts of saltcedar biological control efforts on increasing water supplies and improving riparian habitats of the Colorado River and its principal tributaries,

in the State and elsewhere;

(3) in coordination with the California Department of Water Resources and the California Department of Fish and Wildlife, implement offsite upstream projects in the Delta and upstream Sacramento River and San Joaquin basins that offset the effects on species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) due to activities carried out pursuant this Act, as determined by the Secretaries;

(4) manage reverse flow in the Old and Middle Rivers, as prescribed by the smelt biological opinion and salmonid biological opinion, or any successor biological opinions, to minimize water supply reductions for the Central Valley Project and the State Water Project, and issue guidance not later than December 31, 2015, directing the employees of those agencies to take all steps necessary to manage flow in accordance with this paragraph;

(5) as soon as practicable after the date of enactment of this Act and pursuant to existing authority available to the Secretary of the Interior, participate in, issue grants, or otherwise provide funding for pilot projects to increase water in reservoirs in regional river basins experiencing extreme, exceptional, or sustained drought that have a direct impact on the water supply of the State, including the Colorado River Basin, on the condition that any participation, grant, or funding by the Secretary of the Interior with respect to the Upper Division shall be with or to the respective State; and

(6) use all available scientific tools to identify any changes to real-time operations of the Bureau of Reclamation, State, and local water projects that could result in the availability of additional water supplies.

## SEC. 309. TEMPORARY OPERATIONAL FLEXIBILITY FOR FIRST FEW STORMS OF 2015 WATER YEAR.

(a) Findings.—Congress finds the following:

(1) During the 2014 water year operations of the Central Valley Project and the State Water Project, the incidental take of—

(A) adult Delta smelt was zero;

(B) juvenile Delta smelt was 78 (7.7 percent of the incidental take level);

(C) winter run Chinook was 339 (1.4 percent of the incidental take level);

(D) spring run Chinook was zero; and

(E) steelhead was 261 (8.7 percent of the incidental take level).

(2) The Central Valley Project and State Water Project exceeded an Old and Middle River flow of ^5,000 cubic feet per second over a 14-day average for brief periods after 3-storm events in February and March 2014 as a result of increased pumping, but did not cause substantially increased take of smelt or salmon.

(3) Hydrological conditions in dry years, such as the 2014 water year, have not triggered water pumping restrictions pursuant to the smelt biological opinion.

(4) The Secretaries should be allowed more flexibility to increase pumping levels without causing significant risk to the listed fish species or weakening other environmental

protections.

(5) Given the severe drought conditions in the State, significant groundwater withdrawals for irrigation due to lack of surface water supplies, and the depletion of water supplies in reservoirs, it is imperative that the Secretaries exercise the flexibility provided in this section to capture the maximum quantity of storm flows when storm flows occur in the 2015 water year, and provide for the diversion of those water supplies to the Central Valley Project and State Water Project so that agricultural operations, businesses, and homes in drought-stricken areas will have an opportunity to bolster meager supplies of water when water is available.

(b) Goal.—Consistent with avoiding additional adverse effects on listed fish species beyond the range of adverse effects authorized under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and other environmental protections described in subsection (e), the Secretaries shall authorize the Central Valley Project and the State Water Project to operate at combined levels that result in Old and Middle River flows at up to a <sup>^</sup>7500 cubic feet per second (based on United States Geological Survey gauges on Old and Middle Rivers) daily average for up to 21 cumulative days after October 1, 2014, as described in subsection (c).

(c) Days of Temporary Operational Flexibility.—The temporary operational flexibility described in subsection (b) shall be authorized on days that the California Department of Water Resources determines the daily average river flow of the Sacramento River is at, or above, 17,000 cubic feet per second, as measured at the Sacramento River at Freeport gauge maintained by the United States Geological Survey.

(d) Compliance With Endangered Species Act Authorizations.—In carrying out this section, the Secretaries may continue to impose any requirements under the biological opinions during any period of temporary operational flexibility as the Secretaries determine are reasonably necessary to avoid additional adverse effects on listed fish species beyond the range of adverse effects authorized under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(e) Other Environmental Protections.—

(1) IN GENERAL.—The actions of the Secretaries under this section shall be consistent with applicable regulatory requirements under State law, including State Water Resources Control Board Decision 1641, as that decision may be implemented in any given year.

(2) ADJUSTED RATES ALLOWED.—During the first flush of sediment out of the Delta during the 2015 water year, Old and Middle River flow may be managed at rates less negative than <sup>^</sup>5000 cubic feet per second for a minimum duration to avoid movement of adult Delta smelt to areas in the southern Delta that would be likely to increase entrainment at Central Valley Project and State Water Project pumping plants.

(3) SALMONID BIOLOGICAL OPINION.—This section shall not have any effect on the applicable requirements of the salmonid biological opinion during the period beginning on April 1, 2015 and ending May 31, 2015, unless the Secretary of Commerce finds that some or all of the applicable requirements may be adjusted during the time period to provide emergency water supply relief without resulting in additional adverse effects beyond the adverse effects authorized under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(4) MONITORING AND DATA GATHERING.—During the period in which operations are

carried out under this section, the Commissioner of Reclamation, in coordination with the Director of the United States Fish and Wildlife Service, the Assistant Administrator of the National Marine Fisheries Service, and the head of the California Department of Fish and Wildlife, shall undertake a monitoring program and other data gathering to ensure incidental take levels are not exceeded, and to identify potential actions, if any, necessary to mitigate impacts of the temporary operational flexibility to listed fish species.

(5) MITIGATING IMPACTS.—The Commissioner of Reclamation may take any action, including the transfer of appropriated funds between accounts that, in the judgment of the Commissioner, is necessary to mitigate the impacts of the operations carried out under this section, on the condition that the mitigation is consistent with the requirements of this section.

(f) Technical Adjustments to Target Period.—If, before temporary operational flexibility has been implemented on 21 cumulative days as described in subsection (b), the Secretaries operate the Central Valley Project and the State Water Project combined at levels that result in Old and Middle River flows less negative than ^7500 cubic feet per second during days of temporary operational flexibility as defined in subsection (c), the duration of the operation shall not be counted toward the 21 cumulative days specified in subsection (b).

(g) Emergency Consultation; Effect on Running Averages.—

(1) IN GENERAL.—If necessary to implement this section, the Commissioner of Reclamation shall use the emergency consultation procedures under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) (including the implementing regulations at section 402.05 of title 50, Code of Federal Regulations (or successor regulations)) to temporarily adjust the operating criteria under the biological opinions, solely for the 21 days of temporary operational flexibility and—

(A) not more than necessary to achieve the purposes of this section consistent with the environmental protections described in subsections (d) and (e); and

(B) including, as appropriate, adjustments to ensure that the actual flow rates during the periods of temporary operational flexibility do not count toward the 5-day and 14-day running averages of tidally filtered daily Old and Middle River flow requirements under the biological opinions.

(2) PROHIBITION.—Following the conclusion of the 21 days of temporary operational flexibility, the Commissioner of Reclamation shall not reinstitute consultation on the adjusted operations described in paragraph (1) if the effects on listed fish species of the operations under this section remain within the range of the effects authorized under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(h) Level of Detail Required for Analysis.—In articulating the determinations required under this section, the Secretaries shall fully satisfy the requirements of this section but shall not be expected to provide a greater level of supporting detail for the analysis than feasible to provide within the short timeframe permitted for timely decisionmaking in response to changing conditions in the Delta.

(i) Duration.—The authority to carry out this section shall expire on September 30, 2015.

## SEC. 310. EXPEDITING WATER TRANSFERS.

(a) In General.—Section 3405(a) of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4709(a)) is amended—

(1) by redesignating paragraphs (1) through (3) as paragraphs (4) through (6), respectively;

(2) in the matter preceding paragraph (4) (as so designated)—

(A) in the first sentence, by striking “In order to” and inserting the following:

“(1) IN GENERAL.—In order to”; and

(B) in the second sentence, by striking “Except as provided herein” and inserting the following:

“(3) TERMS.—Except as otherwise provided in this section”; and

(3) by inserting before paragraph (3) (as so designated) the following:

“(2) EXPEDITED TRANSFER OF WATER.—The Secretary shall take all necessary actions to facilitate and expedite transfers of Central Valley Project water in accordance with—

“(A) this Act;

“(B) any other applicable provision of the reclamation laws; and

“(C) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).”;

(4) in paragraph (4) (as so designated)—

(A) in subparagraph (A), by striking “to combination” and inserting “or combination”; and

(B) by striking “3405(a)(2) of this title” each place it appears and inserting “(5)”; and

(5) in paragraph (5) (as so designated), by adding at the end the following:

“(E) The contracting district from which the water is coming, the agency, or the Secretary shall determine if a written transfer proposal is complete within 45 days after the date of submission of the proposal. If the contracting district or agency or the Secretary determines that the proposal is incomplete, the district or agency or the Secretary shall state with specificity what must be added to or revised for the proposal to be complete.”; and

(6) in paragraph (6) (as so designated), by striking “3405(a)(1)(A)-(C), (E), (G), (H), (I), (L), and (M) of this title” and inserting “(A) through (C), (E), (G), (H), (I), (L), and (M) of paragraph (4)”.

(b) Conforming Amendments.—The Central Valley Project Improvement Act (Public Law 102–575) is amended—

(1) in section 3407(c)(1) (106 Stat. 4726), by striking “3405(a)(1)(C)” and inserting “3405(a)(4)(C)”; and

(2) in section 3408(i)(1) (106 Stat. 4729), by striking “3405(a)(1) (A) and (J) of this title” and inserting “subparagraphs (A) and (J) of section 3405(a)(4)”.

## SEC. 311. WARREN ACT CONTRACTS.



[To be supplied.]

## SEC. 312. ADDITIONAL WARREN ACT CONTRACTS.

[To be supplied.]

## TITLE IV—INCREASING WATER STORAGE

### SEC. 401. FINDINGS.

Congress finds that—

(1) the record drought conditions being experienced in the State as of the date of enactment of this Act are—

(A) expected to recur in the future; and

(B) likely to do so with increasing frequency;

(2) water storage is an indispensable and integral part of any solution to address the long-term water challenges of the State;

(3) Congress authorized relevant feasibility studies for 4 water storage projects in the State, including projects for—

(A) enlargement of Shasta Dam in Shasta County under section 2(a) of Public Law 96–375 (94 Stat. 1506), as reaffirmed under section 103(d)(1)(A)(i)(I) of the Calfed Bay-Delta Authorization Act (Public Law 108–361; 118 Stat. 1684);

(B) enlargement of Los Vaqueros Reservoir in Contra Costa County under section 215 of Public Law 108–7 (117 Stat. 147), as reaffirmed under section 103(d)(1)(A)(i)(II) of the Calfed Bay-Delta Authorization Act (Public Law 108–361; 118 Stat. 1684);

(C) construction of North-of-Delta Offstream Storage (Sites Reservoir) in Colusa County under section 215 of Public Law 108–7 (117 Stat. 147), as reaffirmed under section 103(d)(1)(A)(ii)(I) of the Calfed Bay-Delta Authorization Act (Public Law 108–361; 118 Stat. 1684); and

(D) construction of the Upper San Joaquin River storage (Temperance Flat) in Fresno and Madera Counties under section 215 of Public Law 108–7 (117 Stat. 147), as reaffirmed under section 103(d)(1)(A)(ii)(II) of the Calfed Bay-Delta Authorization Act (Public Law 108–361; 118 Stat. 1684);

(4)(A) as of the date of enactment of this Act, it has been more than 10 years since the authorization of the feasibility studies referred to in paragraph (3); but

(B) complete and final feasibility studies have not been prepared for any of those water storage projects;

(5) as of August 2014, only 2 of the 4 projects referred to in paragraph (3) have completed draft feasibility studies;

(6) the slow pace of work on completion of the feasibility studies for those 4 water storage projects is—



(A) unjustified; and

(B) of deep concern; and

(7) there is significant public interest in, and urgency with respect to, completing all feasibility studies and environmental reviews for the water storage projects referred to in paragraph (3), given the critical need for that infrastructure to address the water challenges of the State.

## SEC. 402. CALFED STORAGE FEASIBILITY STUDIES.

(a) In General.—Notwithstanding subparagraph (B)(i) of section 103(d)(1) of the Calfed Bay-Delta Authorization Act (Public Law 108–361; 118 Stat. 1684), the Secretary of the Interior, acting through the Commissioner of Reclamation (referred to in this title as the “Secretary”), shall complete a final feasibility study and any other applicable environmental review documents for the project described in—

(1) subparagraph (A)(i)(I) of that section by not later than December 31, 2014; and

(2) subparagraph (A)(ii)(II) of that section by not later than July 31, 2015.

(b) Environmental Reviews.—In carrying out subsection (a), the Secretary—

(1) shall ensure that—

(A) all applicable reviews, including reviews required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), are completed as expeditiously as practicable; and

(B) the shortest applicable process under that Act is used, including in the completion of—

(i) feasibility studies;

(ii) draft environmental impact statements; and

(iii) final environmental impact statements; and

(2) shall not be required to complete a draft or final environmental impact statement if the Commissioner of Reclamation determines, and the Secretary concurs, that the project fails to meet applicable Federal cost-benefit requirements or standards.

(c) Accountability.—

(1) IN GENERAL.—If the Secretary determines that an environmental review document for the water storage projects referred to in section 103(d)(1) of the Calfed Bay-Delta Authorization Act (Public Law 108–361; 118 Stat. 1684) will not be completed according to the schedule specified in subsection (a), not later than 14 days after the determination, the Secretary shall notify the Committee on Energy and Natural Resources and the Subcommittee on Energy and Water Development of the Committee on Appropriations of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives.

(2) INCLUSIONS.—The notification shall include—

(A) an explanation of the delay;

(B) the anticipated length of the delay and the revised completion date; and

(C) the steps that the Secretary will take to mitigate the delay, including, at a minimum, a request to reprogram existing funds appropriated to the Secretary to meet the revised completion deadline.

(d) Requirement.—The Secretary shall carry out the procedures described in subsection (c) for each subsequent delay beyond the revised completion deadline.

## SEC. 403. WATER STORAGE PROJECT CONSTRUCTION.

(a) In General.—The Secretary may partner or enter into an agreement on the water storage projects identified in section 103(d)(1) of the Calfed Bay-Delta Authorization Act (Public Law 108–361; 118 Stat. 1684) (and Acts supplemental and amendatory to the Act) with local joint powers authorities formed pursuant to State law by irrigation districts and other local water districts and local governments within the applicable hydrologic region, to advance those projects.

[(b) Placeholder – authorization issue.]

## SEC. 404. OTHER STORAGE FEASIBILITY STUDIES.

(a) Definition of Qualifying Project.—In this section, the term “qualifying project” means any new surface water storage project constructed on land administered by the Department of the Interior in a State in which the Bureau of Reclamation has jurisdiction, but excluding any easement, right-of-way, lease, or private holding located on such land.

(b) Lead Agency.—

(1) QUALIFYING PROJECTS WITHIN JURISDICTION OF BUREAU OF RECLAMATION.—The Bureau of Reclamation shall serve as the lead agency for purposes of coordinating all reviews, analyses, opinions, statements, permits, licenses, and other approvals or decisions required under Federal law (including regulations) to construct qualifying projects within the jurisdiction of the Bureau.

(2) QUALIFYING PROJECTS OUTSIDE JURISDICTION OF BUREAU OF RECLAMATION.—If the site of a qualifying project is not located in a State in which the Bureau of Reclamation has jurisdiction, the Secretary shall, by not later than 45 days after the date of receipt of an application for the qualifying project—

(A) designate an alternate agency within the Department of the Interior to serve as the lead agency for purposes of coordinating all reviews, analyses, opinions, statements, permits, licenses, and other approvals or decisions required under Federal law (including regulations) to construct the qualifying project; or

(B) in consultation with the heads of other Federal departments and agencies, identify the appropriate lead agency for the qualifying project.

(c) Cooperating Agencies.—

(1) FEDERAL DEPARTMENTS AND AGENCIES.—The lead agency designated under paragraph (1) or (2) of subsection (b) shall—

(A) as soon as practicable after receipt of an application for a qualifying project,

1 identify any Federal department or agency that may have jurisdiction over a review,  
2 permit, license, approval, or decision required for the qualifying project under  
3 applicable Federal laws (including regulations); and

4 (B) as soon as practicable after the date of identification under subparagraph (A)—

5 (i) notify each applicable department or agency of the identification; and

6 (ii) designate the department or agency as a cooperating agency, unless the  
7 department or agency—

8 (I) has no jurisdiction or authority with respect to the qualifying project;

9 (II) has no expertise or information relevant to the qualifying project or  
10 any review, permit, license, approval, or decision associated with the  
11 qualifying project; or

12 (III) does not intend—

13 (aa) to submit comments regarding the qualifying project; or

14 (bb) to conduct any review of the qualifying project or make any  
15 decision with respect to the qualifying project in a manner other than in  
16 cooperation with the Bureau of Reclamation.

17 (2) STATES.—A State in which a qualifying project is proposed to be carried out may  
18 elect, consistent with Federal and State law, to participate as a cooperating agency, if the  
19 lead agency designated for the proposed qualifying project under paragraph (1) or (2) of  
20 subsection (b) determines that the applicable agency of the State—

21 (A) has jurisdiction over the qualifying project under applicable Federal or State  
22 law;

23 (B) is required to conduct or issue a review of the qualifying project; and

24 (C) is required to make a determination regarding issuing a permit, license, or  
25 approval of the qualifying project.

26 (d) Duties of Lead Agency.—

27 (1) IN GENERAL.—Not later than 30 days after the date of receipt of an application for  
28 approval of a qualifying project, the lead agency shall hold a meeting among the applicant,  
29 the lead agency, and all cooperating agencies to establish, with respect to the qualifying  
30 project, all applicable—

31 (A) requirements;

32 (B) review processes; and

33 (C) stakeholder responsibilities.

34 (2) SCHEDULE.—

35 (A) ESTABLISHMENT.—Not later than 30 days after the date of the meeting under  
36 paragraph (1), the lead agency, in consultation with the attendees of the meeting, shall  
37 establish a schedule for completion of the qualifying project, taking into consideration,  
38 among other relevant factors—

- (i) the responsibilities of cooperating agencies under applicable laws and regulations;
- (ii) the resources available to the cooperating agencies and non-Federal project stakeholders;
- (iii) the overall size and complexity of the qualifying project;
- (iv) the overall schedule for, and cost of, the qualifying project; and
- (v) the sensitivity of the natural and historic resources that may be affected by the qualifying project.

(B) REQUIREMENTS.—On establishment of a schedule for a qualifying project under subparagraph (A), the lead and cooperating agencies shall—

- (i) to the maximum extent practicable, adhere to the schedule; and
- (ii) submit to the Committee on Environment and Public Works of the Senate and the Committee on Natural Resources of the House of Representatives on a semiannual basis a report describing any delays in the schedule, including a description of—
  - (I) the reasons for the delay;
  - (II) the actions that the lead and cooperating agencies will take to minimize the delay; and
  - (III) a revised schedule for the qualifying project, if applicable.

(e) Environmental Reviews.—

(1) SINGLE, UNIFIED ENVIRONMENTAL REVIEW DOCUMENT.—

(A) IN GENERAL.—The lead agency with respect to a qualifying project, in consultation with appropriate stakeholders and cooperating agencies, shall determine whether a single, unified environmental review document relating to the qualifying project is sufficient to comply with applicable Federal laws (including regulations), including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(B) ACTION ON DECLINATION.—If, after consultation under subparagraph (A), a lead agency determines not to adopt a single, unified environmental review document relating to a qualifying project—

- (i) the lead agency shall—
  - (I) document the reasons for the determination; and
  - (II) submit to the Secretary a report describing those reasons; and
- (ii) the Secretary may require the adoption of a single, unified document at the discretion of the Secretary, based on good cause.

(2) ENVIRONMENTAL ASSESSMENT.—Except as provided in paragraph (4), if the lead agency with respect to a qualifying project, in consultation with cooperating agencies, determines that an environmental assessment is sufficient to comply with the requirements of this subsection and other applicable Federal laws (including regulations)—

(A) the public comment period for a draft environmental assessment shall be not more than 60 days after the date of publication in the Federal Register of notice of the public issuance of that draft; and

(B) the lead agency shall issue the final environmental assessment by not later than 180 days after the end of the period for public comments on the draft environmental assessment.

(3) ENVIRONMENTAL IMPACT STATEMENT.—Except as provided in paragraph (4), if the lead agency with respect to a qualifying project, in consultation with cooperating agencies, determines that an environmental impact statement is required to comply with the requirements of this subsection and other applicable Federal laws (including regulations)—

(A) the public comment period for a draft environmental impact statement shall be not more than 60 days after the date of publication in the Federal Register of notice of the public issuance of that draft; and

(B) the lead agency shall issue the final environmental impact statement by not later than 1 year after the end of the period for public comments on the draft environmental assessment.

(4) MODIFICATION OF SCHEDULE.—

(A) IN GENERAL.—In carrying out paragraphs (2) and (3), the lead agency with respect to a qualifying project may modify the schedule of the qualifying project if—

(i)(I) the lead agency can demonstrate good cause, such as the need for additional time to comply with other statutory or regulatory requirements (other than the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)); and

(II) the head of the lead agency submits to Congress a written determination describing the cause and reasons for the modification by not later than 30 days before the original scheduled deadline; or

(ii) the lead agency, the project sponsor, the joint lead agency (if applicable), and all participating and cooperating agencies agree to the modification.

(B) LIMITATION.—Unless the requirements of clause (i) or (ii) of subparagraph (A) are met, no modification under subparagraph (A) shall result in the postponement of the issuance of—

(i) a final environmental assessment by more than 1 year; or

(ii) a final environmental impact statement by more than 2 years.

(C) REVISED SCHEDULE.—If a modification is made pursuant to this paragraph, the lead agency shall publish and adhere to the applicable revised schedule, except as provided in clause (i) or (ii) of subparagraph (A).

(5) REQUIREMENTS.—On commencement of the environmental review process under this subsection, the lead and cooperating agencies shall, as soon as practicable—

(A) make available to all stakeholders of the qualifying project information regarding—

(i) the environmental and socioeconomic resources located within the area of the qualifying project; and

(ii) the general locations of the alternatives under consideration; and

(B) identify any issues of concern regarding the potential environmental or socioeconomic effects of the qualifying project, including any issues that could substantially delay or prevent an agency from granting a permit or other approval that is needed for a study relating to the qualifying project.

(f) Concurrent Review Actions.—

(1) IN GENERAL.—Any review, analysis, permit, license, approval, or decision regarding a qualifying project made by a Federal, State, or local government agency shall be—

(A) conducted, to the maximum extent practicable, concurrently with any other applicable government agency; and

(B) incorporated in the schedule for the qualifying project under subsection (d)(2).

(2) REQUIREMENT.—The lead and cooperating agencies for a qualifying project shall formulate and implement administrative, policy, and procedural mechanisms to enable adherence to the schedule for the qualifying project in a timely, coordinated, and environmentally responsible manner.

(3) GUIDANCE.—The Secretary shall issue guidance regarding the use of programmatic approaches to carry out the environmental review process that, to the maximum extent practicable—

(A) eliminates repetitive discussions of the same issues;

(B) focuses on the actual issues ripe for analysis at each level of review;

(C) establishes a formal process for coordinating with participating and cooperating agencies, including the establishment of a list of all data required to carry out an environmental review process; and

(D) complies with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and all other applicable laws and regulations.

(g) Administrative Record and Data Management.—

(1) IN GENERAL.—The lead agency shall—

(A) be responsible for compiling the administrative record of the information used as the basis for decisions relating to a qualifying project; and

(B) to the maximum extent practicable and consistent with Federal law, make available all data regarding the qualifying project in a format that is accessible via electronic means for project stakeholders, cooperating agencies, and the public.

(2) REPORTS.—Not less frequently than once each year, the lead agency shall submit a progress report regarding a qualifying project to project stakeholders, cooperating agencies, the Committee on Environment and Public Works of the Senate, and the Committee on Natural Resources of the House of Representatives.

(h) Participation by Non-Federal Project Sponsors.—

(1) APPLICATION TO SERVE AS COOPERATING AGENCY.—A non-Federal sponsor of a qualifying project may submit to the lead Secretary an application to serve as a cooperating agency of the qualifying project for purposes of preparing any necessary documents relating to the qualifying project, including an environmental review, if—

(A) the non-Federal sponsor is a public agency as defined under the laws of the State in which the non-Federal sponsor is located;

(B) the non-Federal sponsor agrees to adhere to—

(i) all required Federal laws (including regulations) in carrying out the qualifying project; and

(ii) all decisions regarding the qualifying project that have been agreed on by other stakeholders of the qualifying project; and

(C) the applicable lead agency certifies that participation by the non-Federal sponsor will not inappropriately bias the qualifying project in favor of the non-Federal sponsor.

(2) FUNDS.—Any funds contributed by a non-Federal sponsor to a qualifying project—

(A) may be accepted to maintain or accelerate progress on the qualifying project, subject to the condition that the Secretary shall—

(i) review the use of the funds; and

(ii) certify in writing that the funds—

(I) are used solely to complete applicable environmental reviews; and

(II) do not unduly influence any permit or approval decision regarding the qualifying project; and

(B) shall be applied toward the non-Federal cost-share of the qualifying project.

(i) Applicability to Calfed Storage Studies.—For any feasibility study referred to in section 401(3), this section shall apply to all activities to be carried out under the study on or after the date of enactment of this Act that would lead to congressional authorization of an applicable project for construction.

## SEC. 405. DAM SAFETY PROJECTS WITH INCREASED STORAGE COMPONENT.

(a) Additional Project Benefits.—The Reclamation Safety of Dams Act of 1978 is amended—

(1) in section 3 (43 U.S.C. 507), by striking “Construction” and inserting “Except as provided in section 5B, construction”; and

(2) by inserting after section 5A (43 U.S.C. 509a) the following:

### “SEC. 5B. ADDITIONAL PROJECT BENEFITS.

“(a) In General.—Notwithstanding section 3, if the Secretary, in the judgment of the Secretary, makes a determination described in subsection (b), the Secretary may develop any additional project benefit—

“(1) through the construction of new or supplementary works on a project in conjunction with the activities carried out by the Secretary pursuant to section 2; and

“(2) subject to the conditions described in the feasibility study relating to the project.

“(b) Description of Determination.—A determination referred to in subsection (a) is a determination by the Secretary that—

“(1) an additional project benefit, including additional conservation storage capacity, is—

“(A) necessary; and

“(B) in the interests of the United States; and

“(2) the project benefit proposed to be carried out is—

“(A) feasible; and

“(B) not inconsistent with the purposes of this Act.

“(c) Requirements.—The costs associated with developing an additional project benefit under this section shall be—

“(1) allocated among each entity that receives a benefit from the additional conservation storage capacity, subject to an agreement between the State and Federal funding agencies regarding those allocations; and

“(2) repaid in accordance with all applicable provisions of Federal reclamation law (the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act (43 U.S.C. 371 et seq.).”.

(b) San Luis Reservoir Expansion.—Section 103(f)(1)(A) of the Calfed Bay-Delta Authorization Act (Public Law 108–361; 118 Stat. 1694) is amended—

(1) by striking “Funds” and inserting the following:

“(i) IN GENERAL.—Funds”; and

(2) by adding at the end the following:

“(ii) ENVIRONMENTAL REVIEWS AND FEASIBILITY STUDY.—The Commissioner of Reclamation shall submit to Congress—

“(I) an expansion draft environmental impact statement and feasibility study relating to the San Luis Reservoir by not later than April 1, 2016; and

“(II) a final environmental impact statement relating to the San Luis Reservoir by not later than December 31, 2016.”.

## SEC. 406. UPDATING WATER OPERATIONS MANUALS FOR NON-FEDERAL PROJECTS.

(a) Definitions.—In this section:

(1) NON-FEDERAL PROJECT.—

(A) IN GENERAL.—The term “non-Federal project” means a non-Federal reservoir project operated for flood control in accordance with rules prescribed by the Secretary



pursuant to section 7 of the Act of December 22, 1944 (commonly known as the “Flood Control Act of 1944”) (58 Stat. 890, chapter 665).

(B) EXCLUSION.—The term “non-Federal project” does not include any dam or reservoir owned by—

(i) the Bureau of Reclamation; or

(ii) the Corps of Engineers.

(2) OWNER.—The term “owner” with respect to a non-Federal project, does not include—

(A) the Secretary;

(B) the Secretary of the Interior; or

(C) the head of any other Federal department or agency, notwithstanding any Federal monetary contribution made toward the construction cost of the relevant non-Federal project, if the contribution is predicated a on flood control or other specific benefit.

(3) SECRETARY.—The term “Secretary” means the Secretary of the Army.

(b) Review by Secretary.—

(1) IN GENERAL.—Not later than 1 year after the date of receipt of a request from the owner of a non-Federal project, the Secretary, in consultation with the owner, shall review the water control manual and flood control rule curves and any operational or structural modifications proposed by the owner, including the use of improved weather forecasting and run-off forecasting methods, to enhance the existing purposes of the non-Federal project.

(2) REPORT.—Not later than 90 days after the date of completion of a review under paragraph (1), the Secretary shall submit to the owner of the applicable non-Federal project a report describing the results of the review.

(3) PRIORITY.—In carrying out of this subsection, the Secretary shall give priority to review and revision of water control manuals and flood control rule curves for any non-Federal project—

(A) that is located in a State in which a drought emergency has been declared during the 1-year period ending on the date of review by the Secretary;

(B) the owner of which has submitted to the Secretary a formal request to review or revise the operations manual or rule curves to accommodate new watershed data or proposed project modifications or operational changes;

(C) the water control manual and hydrometeorological information establishing the flood control rule curves of which have not been revised during the 20-year period ending on the date of review by the Secretary;

(D) with respect to which a completed probable maximum flood analysis or other data indicates that revisions of the project control manual or rule curves are likely to enhance water supply benefits and flood control operations; and

(E) modifications or operational changes proposed by the owner of which are likely

to enhance water supply benefits and flood control operations.

(4) NON-FEDERAL CONTRIBUTIONS.—The Secretary may accept non-Federal funds for all or a portion of the cost of carrying out a review or revision of water control manuals and rule curves for non-Federal projects under this subsection.

## SEC. 407. CENTRAL VALLEY PROJECT.

### (a) Cooperative Agreements.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, to determine the feasibility of an agreement for long-term use of an existing or expanded non-Federal storage or conveyance facility to augment Federal water supply, ecosystem, and operational flexibility benefits, the Secretary shall offer to enter into cooperative agreements with non-Federal entities to provide replacement water supplies for drought relief for—

(A) contractors of the Central Valley Project (as defined in section 3403 of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706));

(B) units of the National Wildlife Refuge System;

(C) State wildlife areas; and

(D) private wetland areas.

### (2) REQUIREMENTS.—A cooperative agreement under this subsection shall—

(A) include the purchase of storage capacity in non-Federal facilities from willing sellers; and

(B) provide reimbursement for the temporary use of available capacity in existing above-ground, off-stream storage and associated conveyance facilities owned by local water agencies.

(b) Report.—Not later than 2 years after the date of enactment of this Act, the Secretary shall submit to the Chief of the National Wildlife Refuge System and contractors of the Central Valley Project a report describing the feasibility of the agreement for long-term use described in subsection (a)(1).

## TITLE V—WATER RIGHTS PROTECTIONS

## SEC. 501. PROTECTIONS FOR STATE WATER PROJECT CONTRACTORS.

(a) In General.—If, as a result of the application of this Act, the California Department of Fish and Wildlife makes an election described in subsection (b), the water supply benefits resulting from the election that accrue to the Central Valley Project, if any, shall be shared equally with the State Water Project.

### (b) Description of Elections.—An election referred to in subsection (a) is an election—

(1) to revoke the consistency determination pursuant to section 2080.1 of the California Fish and Game Code;

(2) to amend or issue a new consistency determination pursuant to that section of the

California Fish and Game Code in a manner that results in reduced water supply to the State Water Project, as compared to the water supply available under the smelt biological opinion and the salmonid biological opinion; or

(3) to require an authorization for taking under section 2081 of the California Fish and Game Code for the operation of the State Water Project in a manner that results in reduced water supply to the State Water Project, as compared to the water supply available under the smelt biological opinion and the salmonid biological opinion.

## SEC. 502. AREA OF ORIGIN PROTECTIONS.

(a) Requirement.—With respect to the operation of the Central Valley Project (as defined in section 302), the Secretary of the Interior shall adhere to the water rights laws of the State governing water rights priorities by honoring water rights senior to those held by the United States for operation of the Central Valley Project, regardless of the source of priority, including—

(1) any appropriative water right initiated prior to December 19, 1914; and

(2) any water right or other priority perfected, or expected to be perfected, pursuant to part 2 of division 2, article 1.7 (beginning with section 1215 of chapter 1 of part 2 of division 2, sections 10505, 10505.5, 11128, 11460, 11461, 11462, and 11463, and sections 12200 to 12220) of the California Water Code.

(b) Actions Under ESA.—Any action carried out by the Secretary of the Interior or the Secretary of Commerce pursuant to section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) that requires a diversion to be bypassed, or that involves the release of water from any Central Valley Project water storage facility, shall be carried out in accordance with the water rights priorities established by law in the State.

## SEC. 503. NO REDIRECTED ADVERSE IMPACTS.

The Secretary of the Interior shall ensure that, except as otherwise provided for in a water service or repayment contract, an action carried out in compliance with a legal obligation imposed pursuant to, or as a result of, this Act, including such an action under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) or any other Federal law (including regulations), shall not cause a redirected adverse water supply or an adverse fiscal impact to any individual or entity within the boundaries of the Sacramento River watershed or the State Water Project.

## SEC. 504. EFFECT ON STATE LAWS.

Nothing in this Act preempts any State law in effect on the date of enactment of this Act, including area of origin and other water rights protections.

## TITLE VI—MISCELLANEOUS

## SEC. 601. AUTHORIZED SERVICE AREA.

(a) In General.—The authorized service area of the Central Valley Project authorized under the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706) shall include the area within the boundaries of the Kettleman City Community Services District, California, as

in existence on the date of enactment of this Act.

(b) Long-term Contract.—

(1) IN GENERAL.—Notwithstanding the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706) and subject to paragraph (2), the Secretary of the Interior, in accordance with the reclamation laws, shall enter into a long-term contract with the Kettleman City Community Services District, California, under terms and conditions mutually agreeable to the parties, for the delivery of up to 900 acre-feet of Central Valley Project water for municipal and industrial use.

(2) LIMITATION.—Central Valley Project water deliveries authorized under the contract entered into under paragraph (1) shall be limited to the minimal quantity necessary to meet the immediate needs of the Kettleman City Community Services District, California, in the event that local supplies or State Water Project allocations are insufficient to meet those needs.

(c) Permit.—The Secretary shall apply for a permit with the State for a joint place of use for water deliveries authorized under the contract entered into under subsection (b) with respect to the expanded service area under subsection (a), consistent with State law.

(d) Additional Costs.—If any additional infrastructure, water treatment, or related costs are needed to implement this section, those costs shall be the responsibility of the non-Federal entity.

## SEC. 602. RESCHEDULED WATER.

(a) In General.—In connection with operations of the Central Valley Project, California, if the San Luis Reservoir does not fill by the last day of February of any year, the Secretary of the Interior shall permit any entity with an agricultural water service or repayment contract for the delivery of water from the Delta Division or the San Luis Unit to reschedule into the immediately following contract year (March 1 through the last day of February) any unused Central Valley Project water previously allocated for irrigation purposes.

(b) Apportionment.—If water remaining in Federal storage in San Luis Reservoir on the last day of February of any year is insufficient to meet all rescheduling requests under subsection (a), the Secretary of the Interior shall, based on contract quantity, apportion among all contractors that request to reschedule water all water remaining in San Luis Reservoir on the last day of February of the applicable year.

(c) Availability of Additional Water.—The Secretary shall make all reasonable efforts to make available additional rescheduled water, if the efforts do not interfere with the Central Valley Project operations in the contract year for which Central Valley Project water has been rescheduled.

## SEC. 603. FISHERIES DISASTER DECLARATION.

[TO BE SUPPLIED.]

## SEC. 604. RESTORATION FUND ADVISORY BOARD.

Section 3407 of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4726) is amended by adding at the end the following:

“(g) Report on Expenditure of Funds.—

“(1) IN GENERAL.—For each fiscal year, the Secretary, in consultation with the Advisory Board, shall submit to Congress a plan for the expenditure of all of the funds deposited into the Restoration Fund during the preceding fiscal year.

“(2) CONTENTS.—The plan shall include an analysis of the cost-effectiveness of each expenditure.

“(h) Advisory Board.—

“(1) ESTABLISHMENT.—There is established the Restoration Fund Advisory Board (referred to in this subsection as the ‘Advisory Board’), which shall be composed of 14 members appointed by the Secretary.

“(2) MEMBERSHIP.—

“(A) IN GENERAL.—The Secretary shall appoint to the Advisory Board members who represent the various Central Valley Project stakeholders, of whom—

“(i) 3 members shall be agricultural users of the Central Valley Project;

“(ii) 2 members shall be municipal and industrial users of the Central Valley Project;

“(iii) 3 members shall be power contractors of the Central Valley Project;

“(iv) 1 member shall be a representative of a Federal wildlife refuge that has entered into a contract with the Bureau of Reclamation for Central Valley Project water supplies;

“(v) 1 member shall represent a nongovernmental organization involved in the protection and restoration of California fisheries;

“(vi) 1 member shall represent the commercial fishing industry;

“(vii) 1 member shall represent the recreational fishing industry; and

“(viii) 2 members shall be appointed at the discretion of the Secretary.

“(B) OBSERVER.—The Secretary and the Secretary of Commerce may each designate a representative to act as an observer of the Advisory Board.

“(C) CHAIRPERSON.—The Secretary shall appoint 1 of the members described in subparagraph (A) to serve as chairperson of the Advisory Board.

“(3) TERMS.—The term of each member of the Advisory Board shall be 4 years.

“(4) DATE OF APPOINTMENTS.—The appointment of a member of the Advisory Board shall be made not later than—

“(A) the date that is 120 days after the date of enactment of this subsection; or

“(B) in the case of a vacancy on the Advisory Board described in paragraph (5), the date that is 120 days after the date on which the vacancy occurs.

“(5) VACANCIES.—

“(A) IN GENERAL.—A vacancy on the Advisory Board shall be—

“(i) filled in the manner in which the original appointment was made; and

“(ii) subject to any conditions that applied with respect to the original appointment.

“(B) FILLING UNEXPIRED TERM.—An individual selected to fill a vacancy on the Advisory Board shall be appointed for the unexpired term of the member replaced.

“(C) EXPIRATION OF TERMS.—The term of a member shall not expire before the date on which the successor of the member takes office.

“(6) REMOVAL.—A member of the Advisory Board may be removed from office by the Secretary.

“(7) NONAPPLICABILITY OF FACIA.—The Advisory Board shall not be subject to the requirements of the Federal Advisory Committee Act (5 U.S.C. App.).

“(8) DUTIES.—The Advisory Board shall—

“(A) meet not less frequently than semiannually to develop and provide to the Secretary recommendations regarding priorities and spending levels on projects and programs carried out under this title;

“(B) ensure that any advice or recommendations provided by the Advisory Board reflect the independent judgment of the Advisory Board;

“(C) not later than December 31, 2015, and annually thereafter, submit to the Secretary and Congress the recommendations under subparagraph (A); and

“(D) not later than December 31, 2015, and biennially thereafter, submit to Congress a report that describes the progress made in achieving the actions described in section 3406.

“(9) ADMINISTRATION.—With the consent of the appropriate department or agency head, the Advisory Board may use the facilities and services of any Federal department or agency.

“(10) COOPERATION AND ASSISTANCE.—

“(A) IN GENERAL.—On receipt of a request from the chairperson of the Advisory Board for information or assistance to facilitate carrying out this section, the Secretary shall promptly provide such information or assistance, unless otherwise prohibited by law.

“(B) OFFICE SPACE AND ASSISTANCE.—The Secretary shall provide to the Advisory Board—

“(i) appropriate and adequate office space, together with such equipment, office supplies, and communications facilities and services as may be necessary for the operation of the Advisory Board; and

“(ii) necessary maintenance services for such offices, equipment, and facilities.”.

## SEC. 605. WATER OPERATIONS REVIEW PANEL.

(a) Establishment.—There is established a panel, to be known as the “Water Operations

Review Panel” (referred to in this section as the “Panel”).

(b) Membership.—

(1) COMPOSITION.—The Panel shall be composed of 5 members, to be appointed by the Secretary of the Interior, in consultation with the Secretary of Commerce, of whom—

(A) 1 member shall be a former State-elected official, who shall be the Chairperson of the Panel (referred to in this section as the “Chairperson”);

(B) 2 members shall be fisheries biologists, of whom—

(i) 1 shall have expertise in Delta smelt; and

(ii) 1 shall have expertise in salmonids; and

(C) 2 members shall be engineers with substantial expertise in water operations.

(2) RECOMMENDATIONS.—The Secretary of the Interior shall take into consideration the recommendations—

(A) of the Governor of the State, for purposes of appointing a member under paragraph (1)(A); and

(B) of the Director of the California Department of Water Resources, for purposes of appointing members under paragraph (1)(C).

(3) PROHIBITION ON FEDERAL GOVERNMENT EMPLOYMENT.—For a period of at least 3 years prior to appointment to the Panel, a member appointed to the Panel under paragraph (1) shall not have been an employee of the Federal Government.

(4) DATE OF APPOINTMENTS.—The appointment of a member of the Panel shall be made not later than—

(A) the date that is 120 days after the date of enactment of this Act; or

(B) in the case of a vacancy on the Panel described in subsection (c)(2), the date that is 120 days after the date on which the vacancy occurs.

(c) Term; Vacancies.—

(1) TERMS.—A member of the Panel shall be appointed for a term of 3 years, except that, with respect to the members initially appointed to the Panel under this section—

(A) the Chairperson shall be appointed for a term of 3 years;

(B) of the members appointed under subsection (b)(1)(B)—

(i) 1 member shall be appointed for a term of 1 year; and

(ii) 1 member shall be appointed for a term of 2 years; and

(C) of the members appointed under subsection (b)(1)(C)—

(i) 1 member shall be appointed for a term of 1 year; and

(ii) 1 member shall be appointed for a term of 2 years.

(2) VACANCIES.—

(A) IN GENERAL.—A vacancy on the Panel shall be—

(i) filled in the manner in which the original appointment was made; and

(ii) subject to any conditions that applied with respect to the original appointment.

(B) TERM.—An individual appointed to fill a vacancy on the Panel shall be appointed for the unexpired term of the member being replaced.

(3) EXPIRATION OF TERMS.—The term of any member shall not expire before the date on which the successor of the member takes office.

(d) Removal.—A member of the Panel may be removed from office by the Secretary of the Interior.

(e) Nonapplicability of FACA.—The Panel shall not be subject to the requirements of the Federal Advisory Committee Act (5 U.S.C. App.).

(f) Duties.—

(1) ASSESSMENT AND REPORT ON OPERATIONAL DECISIONS.—

(A) IN GENERAL.—Not later than November 30, 2015, and not later than November 30 of each year thereafter, the Panel shall submit to the Committees and Subcommittees described in subparagraph (B) a report that includes—

(i) an assessment of the operational decisions under this Act; and

(ii) recommendations for the prospective implementation of this Act.

(B) COMMITTEES AND SUBCOMMITTEES.—The Committees and Subcommittees referred to in subparagraph (A) are—

(i) the Committee on Environment and Public Works of the Senate;

(ii) the Subcommittee on Energy and Water Development of the Committee on Appropriations of the Senate;

(iii) the Committee on Natural Resources of the House of Representatives; and

(iv) the Subcommittee on Energy and Water Development of the Committee on Appropriations of the House of Representatives.

(C) REQUIREMENTS FOR ASSESSMENT.—In making the assessment under subparagraph (A)(i), the Panel shall review and evaluate—

(i) the decisions of the Director, the Assistant Administrator, and the Commissioner in implementing this Act and other Federal laws applicable to the operations of the Central Valley Project and the State Water Project;

(ii) the compliance of the Director, the Assistant Administrator, and the Commissioner with the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) with respect to operations of the Central Valley Project and the State Water Project; and

(iii) the efforts of the Director, the Assistant Administrator, and the Commissioner to minimize water supply disruptions while complying with the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and this Act.



(D) REQUIREMENTS FOR RECOMMENDATIONS.—The Panel shall make recommendations under subparagraph (A)(ii) for prospective actions and potential actions for further study to better achieve the purposes of this Act or the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) as applied to the operations of the Central Valley Project and the State Water Project, including proposals—

(i) that in combination, increase—

(I) the survival of listed fish species; and

(II) water supplies for the Central Valley Project and the State Water Project;

(ii) to increase the survival of listed fish species with little to no adverse effects on water supplies for the Central Valley Project and the State Water Project that would result from taking the specific proposed action recommended;

(iii) to increase the water supplies described in clause (ii) with little to no adverse effects on the survival of listed fish species; and

(iv) that respond to the annual reports of the Delta Science Program Independent Review Panel regarding long-term operations opinions.

(2) 5-YEAR ASSESSMENT.—

(A) IN GENERAL.—Not later than 5 years after the date of enactment of this Act, and every 5 years thereafter, the Panel shall publish a report that—

(i) evaluates the effectiveness of this Act; and

(ii) makes legislative recommendations regarding—

(I) any provision of this Act that should be amended or repealed due to ineffectiveness or any other reason; and

(II) alternative legislation or modifications to this Act that could provide additional water supplies for the Central Valley Project and the State Water Project without reducing the survival of listed fish species.

(B) GOAL.—To the maximum extent practicable, the Panel shall submit legislative recommendations that, in the aggregate, would—

(i) improve water supplies for the Central Valley Project and the State Water Project; and

(ii) increase the survival of listed fish species.

(C) SUBMISSION TO CONGRESS.—The Panel shall submit to the Committees and Subcommittees of Congress described in paragraph (1)(B) the legislative recommendations of the Panel.

(3) SUBMISSION OF COMMENTS AND PROPOSALS TO PANEL.—

(A) IN GENERAL.—In preparing the reports under paragraphs (1) and (2), the Panel shall solicit comments and proposals from any interested individuals and entities, in accordance with subparagraph (B).

(B) SCHEDULE.—The Panel shall publish—

(i) a schedule for the receipt of comments and proposals under subparagraph (A); and

(ii) instructions regarding how to submit to the Panel those comments and proposals.

(g) Cooperation and Assistance.—

(1) IN GENERAL.—On request of the Chairperson for information or assistance to facilitate carrying out this section, the Secretary of the Interior and the Secretary of Commerce shall promptly provide such information or assistance to the Panel, unless otherwise prohibited by law.

(2) PROVISION OF OFFICE SPACE; EQUIPMENT.—The Secretary of the Interior shall provide to the Panel—

(A) appropriate and adequate office space;

(B) such equipment, office supplies, and communications facilities and services as may be necessary for the operation of the Panel; and

(C) any necessary maintenance services for the offices, equipment, and facilities provided under subparagraphs (A) and (B).

## SEC. 606. CONTINGENCY IN EVENT OF CONTINUING RESOLUTION FOR FISCAL YEAR 2015.

Any deadline applicable to a Federal department or agency, as described in sections 103(b), 103(d), 202, 204, and 205, shall be extended by the number of days that any resolution providing continuing appropriations for the United States Fish and Wildlife Service or the National Marine Fisheries Service for fiscal year 2015 is in effect after January 1, 2015, if—

(1) such a continuing resolution is enacted;

(2) the continuing resolution does not include funding for the actions of the applicable department or agency required by this Act (or an amendment made by this Act); and

(3) a funding shortfall remains for the actions of the applicable department or agency after consultation by the head of the department or agency with the California Department of Water Resources, Central Valley Project and State Water Project contractors, and the Interagency Ecological Program.

**From:** Marklund, Chris  
**Sent:** Monday, October 20, 2014 11:00 AM  
**To:** 'Tom Birmingham'; 'dbernhardt@bhfs.com'  
**Subject:** Section 602 Carryover Water  
**Attachments:** image001.jpg; image002.png; image003.jpg

Tom,

We've had some concerns raised about Section 602 as written in the Feinstein draft. The edits below have been proposed. I wanted to get your take on them.

Thanks.

Chris

## SEC. 602. RESCHEDULED WATER.

(a) In General.-In connection with operations of the Central Valley Project, if the San Luis Reservoir or the Millerton Lake Reservoir does not fill by the last day of February of any year but the United States has sufficient water available in San Luis Reservoir to meet its obligations under the terms of the contract for exchange waters, dated July 27, 1939, between the United States and the San Joaquin and Kings River Canal and Irrigation Company, Incorporated, et al., Contract No. Ilr-1144, as amended, to provide a substitute supply of water, the Secretary of the Interior shall permit any entity with an agricultural water service or repayment contract for the delivery of water from the Delta Division, the San Luis Unit, or the Friant Division to reschedule into the immediately following contract year (March 1 through the last day of February) any unused Central Valley Project water previously allocated for irrigation purposes, provided existing storage priorities in the respective reservoirs are complied with, and further provided that the rescheduling of water shall not result in the involuntary reduction of water supply to other individuals or districts that receive water from the United States under water service or repayment contracts, water rights settlement contracts or exchange contracts.

(b) Apportionment-If water remaining in Federal storage in San Luis Reservoir on the last day of February of any year is insufficient to meet all rescheduling requests under subsection (a) the Secretary of the Interior shall, based on contract quantity and consistent with existing storage priorities, apportion among all contractors that request to reschedule water all water remaining in San Luis Reservoir on the last day of February of the applicable year.

(c) Availability of Additional Water.-The Secretary shall make all reasonable efforts to make available additional rescheduled water, if the efforts do not interfere with the Central Valley Project operations or obligations in the contract year for which Central Valley Project water has been rescheduled, and subject to the same limitations as set forth in subsections (a) and (b).

--

Chris Marklund  
Legislative Director  
Rep. David Valadao  
1004 Longworth House Office Building  
Washington, DC 20024  
Ph: 202-225-4695  
Fax: 202-225-3196  
[Chris.Marklund@mail.house.gov](mailto:Chris.Marklund@mail.house.gov)

*Please follow Rep. David G. Valadao on Facebook, Twitter, and Instagram*



**From:** Watts, John (Feinstein)  
**Sent:** Tuesday, October 28, 2014 3:35 PM  
**To:** Bernhardt, David L.; Tom Birmingham  
**Subject:** Confidential revised draft language on funding contingency  
**Attachments:** funding contingency 10-28-14.docx

How does this language look to you?

I am also awaiting the alternative funding language that Tom is drafting.

**SEC. 605. DEADLINES FOR CERTAIN AGENCY ACTIONS  
IN THE ABSENCE OF AVAILABLE FUNDING.**

(a) Not later than 30 days after the date of enactment of this Act, and in any subsequent fiscal year, not later than 30 days after the date of enactment of legislation providing appropriations to the Departments of the Interior and Commerce, or the latest such legislation if such bills are enacted separately, the Secretaries of the Interior and Commerce shall submit to the Committees on Appropriations of the House of Representatives and the Senate a detailed spend plan for federal, state, and local funds that remain available for obligation or expenditure in the current fiscal year for the agency actions prescribed in sections 103(b), 103(d), 202, 204, 205, and 308(1).

(b) Not later than 30 days after submission of the spend plan required by subsection (a), following consultation with the Committees on Appropriations of the House of Representatives and the Senate, the Secretaries of the Interior and Commerce may extend the deadlines contained in sections 103(b), 103(d), 202, 204, 205, and 308(1) through enactment of subsequent appropriations legislation for the following fiscal year if there is not sufficient funding available for obligation or expenditure for the agency actions prescribed in such sections.

**From:** Tom Birmingham  
**Sent:** Wednesday, October 29, 2014 8:18 AM  
**To:** 'Watts, John (Feinstein)'  
**CC:** 'David Bernhardt'  
**Subject:** Restoration Fund Payments

John,

As you requested, I drafted the following:

For a period of ten years following the date of enactment of this Act, water made available to any exchange or settlement contractor that receives water from the Delta Division or the San Luis Unit of the Central Valley Project shall be subject to payments collected pursuant to section 3407 of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4\_\_\_\_), which shall be collected from water service and repayment contractors within the Central Valley Project as an operations and maintenance charge.

Tom

**From:** Watts, John (Feinstein)  
**Sent:** Wednesday, October 29, 2014 9:14 AM  
**To:** 'Tom Birmingham'  
**CC:** 'David Bernhardt'  
**Subject:** RE: Restoration Fund Payments

Tom, Thanks. We had discussed including language to reduce the level of the fee to CVP Contractors to the degree that SWP contractors contributed to the implementation of this Act. Did you deliberately drop this part of the language? If not, do you have a suggestion for how to draft a subsection (b) to this language that could address SWP contractor contributions?

---

**From:** Tom Birmingham [mailto:tbirmingham@westlandswater.org]  
**Sent:** Wednesday, October 29, 2014 11:18 AM  
**To:** Watts, John (Feinstein)  
**Cc:** 'David Bernhardt'  
**Subject:** Restoration Fund Payments

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Tom

**From:** Tom Birmingham  
**Sent:** Wednesday, October 29, 2014 11:43 AM  
**To:** 'Watts, John (Feinstein)'  
**CC:** 'David Bernhardt'  
**Subject:** RE: Restoration Fund Payments

John,

I did not deliberately omit the language on payments from SWP contractors; I simply forgot. I suggest the following at the end of the language I drafted:

The collection of restoration fund payments collected from Central Valley Project water service or repayment contractors shall be reduced by such sums as voluntarily contributed by any contractor that receives water from the State Water Project.

Tom

---

**From:** Watts, John (Feinstein) [[mailto:John\\_Watts@feinstein.senate.gov](mailto:John_Watts@feinstein.senate.gov)]  
**Sent:** Wednesday, October 29, 2014 9:14 AM  
**To:** 'Tom Birmingham'  
**Cc:** 'David Bernhardt'  
**Subject:** RE: Restoration Fund Payments

Tom, Thanks. We had discussed including language to reduce the level of the fee to CVP Contractors to the degree that SWP contractors contributed to the implementation of this Act. Did you deliberately drop this part of the language? If not, do you have a suggestion for how to draft a subsection (b) to this language that could address SWP contractor contributions?

---

**From:** Tom Birmingham [<mailto:tbirmingham@westlandswater.org>]  
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Tom



**From:** Watts, John (Feinstein)  
**Sent:** Wednesday, October 29, 2014 12:17 PM  
**To:** 'Tom Birmingham'  
**CC:** 'David Bernhardt'  
**Subject:** RE: Restoration Fund Payments

Got it, thanks.

How did your call with Melissa and Brent go? I called Melissa this morning, and she mentioned you were talking.

---

**From:** Tom Birmingham [<mailto:tbirmingham@westlandswater.org>]  
**Sent:** Wednesday, October 29, 2014 2:43 PM  
**To:** Watts, John (Feinstein)  
**Cc:** 'David Bernhardt'  
**Subject:** RE: Restoration Fund Payments

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**Sent:** Wednesday, October 29, 2014 9:14 AM  
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**Sent:** Wednesday, October 29, 2014 11:18 AM  
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**Cc:** 'David Bernhardt'  
**Subject:** Restoration Fund Payments

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102-575; 106 Stat. 4\_\_\_\_), which shall be collected from water service and repayment contractors within the Central Valley Project as an operations and maintenance charge.

Tom

**From:** Tom Birmingham  
**Sent:** Wednesday, October 29, 2014 12:22 PM  
**To:** 'Watts, John (Feinstein)'  
**CC:** 'David Bernhardt'  
**Subject:** RE: Restoration Fund Payments

The discussion was productive. I drafted some revised language and we are talking again at 12:30 Pacific time.

---

**From:** Watts, John (Feinstein) [[mailto:John\\_Watts@feinstein.senate.gov](mailto:John_Watts@feinstein.senate.gov)]  
**Sent:** Wednesday, October 29, 2014 12:17 PM  
**To:** 'Tom Birmingham'  
**Cc:** 'David Bernhardt'  
**Subject:** RE: Restoration Fund Payments

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**From:** Tom Birmingham [<mailto:tbirmingham@westlandswater.org>]  
**Sent:** Wednesday, October 29, 2014 2:43 PM  
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**Cc:** 'David Bernhardt'  
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Tom

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**From:** Watts, John (Feinstein) [[mailto:John\\_Watts@feinstein.senate.gov](mailto:John_Watts@feinstein.senate.gov)]  
**Sent:** Wednesday, October 29, 2014 9:14 AM  
**To:** 'Tom Birmingham'  
**Cc:** 'David Bernhardt'  
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**To:** Watts, John (Feinstein)

**Cc:** 'David Bernhardt'

**Subject:** Restoration Fund Payments

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Tom

**From:** Nelson, Damon  
**Sent:** Thursday, October 30, 2014 11:39 AM  
**To:** Bernhardt, David L.; Tom Birmingham  
**Subject:** We got McCarthy's edits....

It is likely we will meet tomorrow to go over the combined edits.

---

Damon Nelson  
Deputy Chief of Staff & Legislative Director  
Congressman Devin Nunes  
Office: (202) 225-2523

*Office Mission* To ensure our constituents and all Americans live free and prosperous lives in a healthy and safe environment by serving, communicating, protecting and representing them in a professional and caring manner.



**From:** Nelson, Damon

**Sent:** Thursday, October 30, 2014 1:05 PM

**To:** Tom Birmingham; Bernhardt, David L.

**Subject:** CA Water Bill

**Attachments:** Combined House Edits - CA Water Bill.docx; Combined House Edits without highlights - CA Water Bill.docx

To start, this absolutely cannot be sent to anyone. This has not been approved by House offices and needs some reconciliation. The goal is for House offices to meet tomorrow.

So, attached are two documents in which I tried to combine the edits from all offices. The first one will show the edits in color coded highlights based on member. The second is the same document with the highlights removed for ease of reading.

Again, please do not distribute.

---

Damon Nelson  
Deputy Chief of Staff & Legislative Director  
Congressman Devin Nunes  
Office: (202) 225-2523

*Office Mission* To ensure our constituents and all Americans live free and prosperous lives in a healthy and safe environment by serving, communicating, protecting and representing them in a professional and caring manner.



*CONFIDENTIAL DRAFT LANGUAGE – DO NOT DISTRIBUTE*

Title: To provide drought relief in the State of California, and for other purposes.

Valadao; Nunes; Denham; McCarthy; McClintock;

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) Short Title.—This Act may be cited as the “California Drought Relief Act of 2014”.

(b) Table of Contents.—The table of contents of this Act is as follows:

Sec.1.Short title; table of contents.

Sec.2.Findings.

Sec.3.Definitions.

**TITLE I—ADJUSTING DELTA SMELT MANAGEMENT  
BASED ON INCREASED REAL-TIME MONITORING AND  
UPDATED SCIENCE**

Sec.101.Definitions.

Sec.102.Revise incidental take level calculation to reflect new science.

Sec.103.Factoring increased real-time monitoring and updated science into Delta Delta smelt management.

**TITLE II—ENSURING SALMONID MANAGEMENT IS  
RESPONSIVE TO NEW SCIENCE**

Sec.201.Definitions.

Sec.202.Required scientific studies.

Sec.203.Process for ensuring salmonid management is responsive to new science.

Sec.204.Pilot program to protect native anadromous fish in the Stanislaus River.

Sec.205.CALFED invasive species pilot projects in the Sacramento-San Joaquin Bay Delta and its tributaries.

Sec.206.Mark fishery and harvest management.

Sec.207.New actions to benefit Central Valley salmonids.

**TITLE III—OPERATIONAL FLEXIBILITY AND DROUGHT  
RELIEF**

Sec.301.Findings.

Sec.302.Definitions.

*CONFIDENTIAL DRAFT LANGUAGE – DO NOT DISTRIBUTE*

- 1 Sec.303.Operational flexibility in times of drought.  
2 Sec.304.Operation of cross-channel gates.  
3 Sec.305.Flexibility for export/inflow ratio.  
4 Sec.306.Emergency environmental reviews.  
5 Sec.307.Prioritizing State revolving funds during droughts.  
6 Sec.308.Increased flexibility for regular project operations.  
7 Sec.309.Temporary operational flexibility for first few storms of 2015 water year.  
8 Sec.310.Expediting water transfers.  
9 Sec.311.Warren Act contracts. [PLACEHOLDER]  
10 Sec.312.Additional Warren Act contracts. [PLACEHOLDER]

Commented [A1]: Stupid

Commented [A2]: Major issues on the Stan River and New Melones Ops. Nothing to submit for Sec. 311 and the downstream districts are no ok with a provision for upstream users at this time.

**TITLE IV—INCREASING WATER STORAGE**

- 12 Sec.401.Findings.  
13 Sec.402.Calfed storage feasibility studies.  
14 Sec.403.Water storage project construction.  
15 Sec.404.Other storage feasibility studies.  
16 Sec.405.Dam safety projects with increased storage component.  
17 Sec.406.Updating water operations manuals for non-Federal projects.  
18 Sec.407.Central Valley Project.

Commented [A3]: Huffman

**TITLE V—WATER RIGHTS PROTECTIONS**

- 20 Sec.501.Protections for State water project contractors.  
21 Sec.502.Area of origin protections.  
22 Sec.503.No redirected adverse impacts.  
23 Sec.504.Effect on State laws.

**TITLE VI—MISCELLANEOUS**

- 25 Sec.601.Authorized service area.  
26 Sec.602.Rescheduled water.  
27 Sec.603.Fisheries disaster declaration. [PLACEHOLDER]  
28 Sec.604.Oversight board for Restoration Fund.  
29 Sec.605.Water operations review panel.  
30 Sec.606.Contingency in event of continuing resolution for fiscal year 2015.

Commented [A4]: No way.

Commented [A5]: Waste of time.

Commented [A6]: No point. Needs to be explained further.



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1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) As established in the Proclamation of a State of Emergency issued by the Governor of  
4 the State on January 17, 2014, the State is experiencing record dry conditions;

5 (2) Extremely dry conditions have persisted in the State since 2012, and the drought  
6 conditions are likely to persist into the future;

7 (3) As of September 2014, the National Weather Service’s forecast does not show a high  
8 likelihood of the State experiencing above-normal precipitation for the remainder of the  
9 calendar year;

10 (4) The water supplies of the State are at record-low levels, as indicated by the fact that  
11 all major Central Valley Project reservoir levels were at 20-35 percent of capacity as of  
12 September 25, 2014;

13 (5) The lack of precipitation has been a significant contributing factor to the 6,091 fires  
14 experienced in the State as of September 15, 2014, and which covered nearly 400,000 acres;

15 (6) According to a study released by the University of California, Davis in July 2014, the  
16 drought has led to the fallowing of 428,000 acres of farmland, loss of \$810 million in crop  
17 revenue, loss of \$203 million in dairy and other livestock value, and increased groundwater  
18 pumping costs by \$454 million. The statewide economic costs are estimated to be \$2.2  
19 billion, with over 17,000 seasonal and part-time agricultural jobs lost;

20 (7) CVPIA Level II water deliveries to refuges have also been reduced by 25% in the  
21 north of Delta region, and by 35% in the south of Delta region;

22 (8) Only one-sixth of the usual acres of rice fields are being flooded this fall, which leads  
23 to a significant decline in habitat for migratory birds and an increased risk of disease at the  
24 remaining wetlands due to overcrowding of such birds;

25 (9) The drought of 2013 through 2014 constitutes a serious emergency that poses  
26 immediate and severe risks to human life and safety and to the environment throughout the  
27 State;

28 (10) The serious emergency described in paragraph (4) requires—

29 (A) immediate and credible action that respects the complexity of the water system  
30 of the State and the importance of the water system to the entire State; and

31 (B) policies that do not pit stakeholders against one another, which history shows  
32 only leads to costly litigation that benefits no one and prevents any real solutions;

33 (11) Federal law (including regulations) directly authorizes expedited decisionmaking  
34 procedures and environmental and public review procedures to enable timely and  
35 appropriate implementation of actions to respond to the type and severity of the serious  
36 emergency described in paragraph (4); and

37 (12) The serious emergency described in paragraph (4) fully satisfies the conditions  
38 necessary for the exercise of emergency decisionmaking, analytical, and public review  
39 requirements under—

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(A) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(B) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(C) water control management procedures of the Corps of Engineers described in section 222.5 of title 33, Code of Federal Regulations (including successor regulations); and

(D) the Reclamation States Emergency Drought Relief Act of 1991 (Public Law 102-250; 106 Stat. 53).

(13) The ~~2008~~ smelt biological opinion and ~~2008~~ salmonid biological opinion contain reasonable and prudent alternatives ~~intended to avoid the likelihood of jeopardy for listed species or resulting in the destruction or adverse modification of critical habitat of listed species~~ protect listed fish species from being jeopardized by operation of the Central Valley Project and State Water Project and to prevent adverse modification of designated critical habitat;

(14) The effect of those reasonable and prudent alternatives in the biological opinions may restrict the amount of water pumping that can occur to deliver water for agricultural, municipal, industrial, groundwater, and refuge uses in California;

(15) Data on the difference between water demand and reliable water supplies for various regions south of the ~~delta~~ Delta, including the San Joaquin Valley, indicate there is a significant annual gap between reliable water supplies to meet agricultural, municipal and industrial, groundwater, and refuges water needs within the South of Delta and Friant Division of the Central Valley Project and the State Water Project south of the Sacramento-San Joaquin River Delta and north of the Tehachapi mountain range and the demands of those areas. This gap varies depending on the methodology of the analysis performed, but can be represented in the following ways:

(A) For Central Valley Project South-of-Delta water service contractors, if it is assumed that a water supply deficit is the difference in the amount of water available for allocation versus the maximum contract quantity, ~~particularly in more recent years~~ then the water supply deficits that have developed from 1992 to 2014 as a result of ~~legislative and regulatory~~ changes besides natural variations in hydrology during this timeframe range between 720,000 and 1,100,000 acre-feet.

(B) For Central Valley Project and State Water Project water service contractors south of the Delta and north of the Tehachapi mountain range, if it is assumed that a water supply deficit is the difference between reliable water supplies, including maximum water contract deliveries, safe yield of groundwater, safe yield of local and surface supplies and long-term contracted water transfers, and water demands, including water demands from agriculture, municipal and industrial and refuge contractors, then the water supply deficit ranges between approximately 2,500,000 to 2,700,000 acre-feet.

~~(C) The California Water Plan evaluated outcomes under current conditions under 195 combinations of climate and growth scenarios, projecting a range of urban and agricultural reliability into the future. Reliability in this instance is defined as the percentage of years in which demand is sufficiently met by supply. Reliability across a range of futures within the San Joaquin Valley can be presented as~~

**Commented [A7]:** This section is harmful to SIV water users. Needs to be discussed with Congressman Nunes' staff.

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(A) Expert panel reviews have concluded that instantaneous water velocities in the tidal Delta affect juvenile salmonids, not “tidally average” flows, as previously assumed. Based on instantaneous water velocity modeling, water exports have a much smaller area of effect than was previously believed;

(B) Tagging studies conducted since 1993 (representing more than 28 million fish) demonstrate that the proportion of Sacramento Basin origin Chinook salmon entrained into the pumping facilities (including pre-screen losses) are on average less than 1/10 of 1%; and

(C) Telemetric studies of Sacramento Basin and San Joaquin Basin origin juvenile Chinook salmon have not demonstrated any significant adverse effect from water exports on fish survival.

(17) Data of pumping activities at the Central Valley Project and State Water Project delta pumps identifies that, on average from Water Year 2009 to Water Year 2014, take of Delta smelt is 80 percent less than allowable take levels under pumping activity takes 893 delta Delta smelt annually with an authorized take level of 5,003 delta Delta smelt annually according to the biological opinion issued December 15, 2008.

(18) Data of field sampling activities of the Interagency Ecological Program located in the Sacramento-San Joaquin Estuary identifies that, on average from 2005 to 2013, the program “takes” 3,500 delta smelt during annual surveys with an authorized “take” level of 33,480 delta smelt annually, according to the biological opinion issued December 9, 1997.

(4819) It is worth exploring whether there is a way to implement the biological opinions that would preserve the protections afforded listed fish and simultaneously increase water deliveries to the Central Valley Project and State Water Project without weakening environmental laws or protections.

(26) In 2014, better information exists than was known in 2008 concerning conditions and operations that may or may not lead to high salvage events that jeopardize the fish populations, and what alternative management actions can be taken to avoid jeopardy.

(2521) Alternative management strategies, such as trapping and barging juvenile salmon through the Delta, removing non-native species, enhancing habitat, and monitoring fish movement and location in real-time and improving water quality in the Delta can contribute significantly to protecting and recovering these endangered fish species, and at potentially lower costs to water supplies.

(2427) Resolution of fundamental policy questions concerning the extent to which application of the Endangered Species Act affects the operation of the Central Valley Project and State Water Project is the responsibility of Congress.

### SEC. 3. DEFINITIONS.

In this Act:

(1) DELTA.—The term “Delta” means the Sacramento-San Joaquin Delta and the Suisun Marsh, as defined in sections 12220 and 29101 of the California Public Resources Code.

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(2) Export Pumping Rates.—The term “export pumping rates” means the rates of pumping at the **W** “Bill” Jones Pumping Plant and the Harvey O. Banks Pumping Plant, in the southern Delta.

(3) JEOPARDY.—The term “jeopardy” means to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.

(4) LISTED SALMONID SPECIES.—The term “listed salmonid species” means natural origin steelhead, natural origin genetic spring run Chinook, and genetic winter run Chinook salmon including hatchery steelhead or salmon populations within the evolutionary significant unit (ESU) or distinct population segment (or DPS).

**Commented [A8]:** Evolutionarily Significant Unit (ESU) / Distinct Population Segment (DPS)

(5) Significant Negative Impact On The Long-Term Survival.—The term “significant negative impact on the long-term survival” means to reduce appreciably the likelihood of the survival of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.

(6) OMR.—The term “OMR” means the Old and Middle River in the Delta.

(7) OMR FLOW OF -5000 CFS.—The term “OMR flow of -5000 cfs” means Old and Middle River flow of negative 5,000 cubic feet per second as described in measured by—

(A) the smelt biological opinion; and

(B) the salmonid biological opinion.

(8) SALMONID BIOLOGICAL OPINION.—The term “salmonid biological opinion” means the biological opinion issued by the National Marine Fisheries Service on June 4, 2009.

(9) SMELT BIOLOGICAL OPINION.—The term “smelt biological opinion” means the biological opinion on the Long-Term Operational Criteria and Plan for coordination of the Central Valley Project and State Water Project issued by the United States Fish and Wildlife Service on December 15, 2008.

(10) STATE.—The term “State” means the State of California.

**TITLE I—ADJUSTING DELTA SMELT MANAGEMENT  
BASED ON INCREASED REAL-TIME MONITORING AND  
UPDATED SCIENCE**

**SEC. 101. DEFINITIONS.**

In this title:

(1) DIRECTOR.—The term “Director” means the Director of the United States Fish and Wildlife Service.

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(2) DELTA SMELT.—The term “Delta smelt” means the fish species with the scientific name *Hypomesus transpacificus*.

(3) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

**SEC. 102. REVISE INCIDENTAL TAKE LEVEL  
CALCULATION FOR DELTA SMELT TO REFLECT NEW  
SCIENCE.**

(a) No later than October 1, 2015, and at least every five years thereafter, the Director of Fish and Wildlife Service, in cooperation with other federal, state, and local agencies, shall use the best scientific and commercial data available to complete a review and, if warranted, a modification of the method used to calculate the incidental take level for adult and larval/juvenile Delta smelt in the 2008 Delta smelt biological opinion that takes into account all life stages, among other considerations,—

- (a) salvage information collected since at least 1993, available over at least 18 years;
- (b) updated or more recently developed statistical models;
- (c) updated scientific and commercial data; and
- (d) the most recent information regarding the environmental factors driving Delta-Delta smelt salvage.

(b) Modified Incidental Take Level.—Unless the Director determines in writing that one or more all or part of the requirements described in paragraphs (1) through (4) below of subsection (a) are not appropriate, the modified incidental take level described in subsection (a) shall—

- (1) Be normalized for the abundance of prespawning adult Delta smelt using the Fall Midwater Trawl Index or other index;
- (2) Be based on a simulation of the salvage that would have occurred from 1993 through 2012 if OMR flow has been consistent with the smelt biological opinions;
- (3) Base the simulation on a correlation between annual salvage rates and historic water clarity and OMR flow during the adult salvage period; and
- (4) Set the incidental take level as the 80 percent upper prediction interval derived from simulated salvage rates since at least 1993.

**SEC. 103. FACTORING INCREASED REAL-TIME  
MONITORING AND UPDATED SCIENCE INTO DELTA  
SMELT MANAGEMENT.**

(a) In General.—The Director shall use the best scientific and commercial data available to implement, continuously evaluate, and refine or amend, as appropriate, the reasonable and prudent alternative described in the 2008 Delta smelt biological opinion, as amended, and any successor opinions or court order, shall be implemented consistent

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1 The Secretary shall make all significant decisions that implement the smelt biological  
2 opinion, or any successor opinions, in writing, and shall document the significant facts  
3 upon which such decisions are made, consistent with Section 706 of Title 5 of the United  
4 States Code.

5 (b) Increased Monitoring to Inform Real-time Operations.— ~~Contingent upon funding,~~  
6 ~~the~~ The Secretary shall conduct additional surveys, on an annual basis at the appropriate  
7 time of the year based on environmental conditions, in collaboration with other ~~delta~~  
8 ~~Delta~~ science interests.

9 (1) In implementing this section, ~~after seeking public input,~~ the Secretary shall —

10 (A) use the most ~~appropriate-accurate~~ survey methods ~~available~~ for the  
11 detection of ~~delta-Delta~~ smelt to determine the extent that adult ~~delta-Delta~~  
12 smelt are distributed in relation to certain levels of turbidity, or other  
13 environmental factors that may influence salvage rate; and

14 (B) use results from appropriate survey methods for the detection of ~~delta~~  
15 ~~Delta~~ smelt to determine how the Central Valley Project and State Water  
16 Project may be operated more efficiently to minimize salvage while maximizing  
17 ~~export pumping rates of water export without causing a significant negative~~  
18 ~~impact on the long-term survival of the Delta smelt.~~

19 (2) During the period beginning on December 1, 2014 and ending March 31, 2015,  
20 and in each successive December through March period, if suspended sediment loads  
21 enter the Delta from the Sacramento River and the suspended sediment loads appear  
22 likely to raise turbidity levels in Old River north of the export pumps from values  
23 below 12 Nephelometric Turbidity Units (NTU) to values above 12 NTU, the  
24 Secretary shall—

25 (A) conduct daily monitoring using appropriate survey methods at locations  
26 including, but not limited to, the vicinity of Station 902 to determine the extent  
27 that adult Delta smelt are moving with turbidity toward the export pumps; and

28 (B) use results from the monitoring surveys ~~referenced in paragraph (A) at~~  
29 ~~locations including, but not limited to, the vicinity of Station 902~~ to determine  
30 how increased trawling can inform daily real-time Central Valley Project and  
31 State Water Project operations to minimize salvage while maximizing ~~export~~  
32 ~~pumping rates of water export without causing a significant negative impact on~~  
33 ~~the long-term survival of the Delta smelt.~~

34 (c) Periodic Review of Monitoring.— ~~Within twelve months of the date of enactment of~~  
35 ~~this title, and~~ ~~At~~ ~~at~~ least once every 5 years ~~hereafter, or sooner if the Secretary~~  
36 ~~determines it is appropriate,~~ the Secretary shall—

37 (1) evaluate whether the monitoring program under subsection (b), combined with  
38 other monitoring programs for the Delta, is providing sufficient data to inform  
39 Central Valley Project and State Water Project operations to minimize salvage while

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maximizing export pumping rates without causing a significant negative impact on the long-term survival of the Delta smelt; and

(2) determine whether the monitoring efforts should be changed in the short- or long-term to provide more useful data.

(d) Delta Smelt Distribution Study.—

(1) IN GENERAL.— No later than January 1, 2016, and at least every five years thereafter, contingent upon funding, the Secretary, in collaboration with the California Department of Fish and Wildlife, the California Department of Water Resources, public water agencies, and other interested entities, Delta science partners, shall implement new targeted sampling and monitoring specifically designed to understand delta-Delta smelt abundance, distribution, and the types of habitat occupied by delta-Delta smelt during all life stages.

(2) SAMPLING.—The Delta smelt distribution study shall, at a minimum—

(A) include recording water quality and tidal data;

(B) be designed to understand delta-Delta smelt abundance, distribution, habitat use, and movements throughout the delta-Delta, Suisun Marsh, and other areas occupied by the Delta smelt during all seasons;

(C) consider areas not routinely sampled by existing monitoring programs, including wetland channels, near-shore water, depths below 35 feet, and shallow-water; and

(D) use survey methods, including sampling gear, best suited to collect the most accurate data for the type of sampling or monitoring.

(e) Scientifically supported implementation of Old and Middle River flow requirements.—In implementing the provisions of the smelt biological opinion, or any successor biological opinion, pertaining to management of reverse flow in the Old and Middle Rivers, the Secretary shall—

(1) consider the relevant provisions of the biological opinion or any successor biological opinion;

(2) manage reverse flow in Old and Middle Rivers as prescribed by the smelt biological opinion, or any successor biological opinion or court order, to maximize/minimize water supply reductions for the Central Valley Project and the State Water Project by establishing OMR flow at -5,000 cfs unless information developed by the Secretary under paragraphs (3) and (4) leads the Secretary to reasonably conclude that less negative OMR flows are necessary to avoid a significant negative impact on the long-term survival of the Delta smelt;

(3) document in writing any significant facts about real-time conditions relevant to the determinations of reverse OMR flow rates, including—



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(A) whether targeted real-time fish monitoring in Old River pursuant to this section, including monitoring in the vicinity of Station 902, indicates that a ~~significant negative impact on the long-term survival of the~~ Delta smelt is imminent; and

(B) whether near-term forecasts with available salvage models show under prevailing conditions that OMR flow of -5000 cubic feet per second will ~~cause a significant negative impact on the long-term survival of the Delta~~ ~~significantly increased take of delta smelt~~; and

(4) show in writing that any determination to manage OMR reverse flow at rates less negative than -5000 cubic feet per second is necessary to avoid a ~~significant~~ negative impact ~~research on~~ the long-term survival of the Delta smelt, including an explanation of the data examined and the connection between those data and the choice made, after considering:

~~(A) the findings in paragraph (3);~~

~~(B)~~ the potential effects of ~~documented, quantified~~ entrainment on subsequent smelt abundance, including consideration of the distribution of the population throughout the Delta,

~~(C)~~ the water temperature,

~~(D)~~ other ~~significant~~ factors relevant to the determination; and

~~(E)~~ whether any alternative measures could have a ~~substantially~~ lesser water supply impact.

~~(5)~~ for any subsequent biological opinion, make the showing required in paragraph ~~(4)~~ for any determination to manage OMR reverse flow at rates less negative than the upper limit in the biological opinion ~~if the upper limit in the biological opinion is more negative than -5,000 cubic feet per second.~~

(f) Memorandum of Understanding. No later than December 1, 2014, the Commissioner and the Director will execute a Memorandum of Understanding (MOU) to ensure that the smelt biological opinion is implemented in a manner that ~~maximizes~~ ~~minimizes water supply losses~~ while complying with applicable laws and regulations. If that MOU alters any procedures set out in the biological opinion, there will be no need to reinitiate consultation if those changes do not have a ~~significant negative impact on the long-term survival~~ ~~a adverse effect~~ on listed species and the implementation of the MOU would not be a major change to implementation of the biological opinion. Any change to procedures that does not create a ~~significant negative impact on the long-term survival~~ ~~new adverse effect~~ to listed species will not alter application of the take exemption in the incidental take statement in the biological opinion under the Endangered Species Act, section 7(o)(2).

~~(g) Calculation of Reverse Flow in OMR - Within 90 days of the enactment of this title the Secretary is directed, in consultation with the California Department of Water~~

Commented [A9]: Entrainment should not be a nebulous figure. Entrainment should be quantified



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Resources to revise the method used to calculate reverse flow in Old and Middle Rivers for implementation of the reasonable and prudent alternatives in the smelt biological opinion and the salmonid biological opinion, and any succeeding biological opinions, for the purpose of increasing Central Valley Project and State Water Project water supplies. The method of calculating reverse flow in Old and Middle Rivers shall be reevaluated not less than every five years thereafter to achieve maximum export pumping rates within limits established by the smelt biological opinion, the salmonid biological opinion, and any succeeding biological opinions.

## TITLE II—ENSURING SALMONID MANAGEMENT IS RESPONSIVE TO NEW SCIENCE

### SEC. 201. DEFINITIONS.

In this title:

(1) ASSISTANT ADMINISTRATOR.—The term “Assistant Administrator” means the Assistant Administrator of NOAA Fisheries.

(2) SECRETARY.—The term “Secretary” means the Secretary of Commerce.

(3) Other Affected Interests. — The term “other affected interests” means the State of California, subdivisions of the State of California, public water agencies and the tens of millions of people who benefit directly and indirectly from the multipurpose operations of the Central Valley Project and the State Water Project.

(4) Commissioner. — The term “Commission” means the Commissioner of the Bureau of Reclamation.

(5) DIRECTOR. — The term “Director” means the Director of the United States Fish and Wildlife Service.

### SEC. 202. REQUIRED SCIENTIFIC STUDIES.

(a) Trap and Barge Pilot Project to Increase Survivals Through the Delta.—The Assistant Administrator and the Commissioner shall, in collaboration with the U.S. Fish and Wildlife Service, the California Department of Fish and Wildlife, water agencies, and other interested parties, design, permit, implement and evaluate a pilot program to test the efficacy of an experimental trap and barge program to improve survival of juvenile salmonids emigrating from the San Joaquin watershed through the Delta, as further described below.

(1) Within 30 days of enactment, the Assistant Administrator shall convene a working group of the relevant agencies and other interested parties through which to develop and execute a plan for the design, budgeting, implementation and evaluation of such a pilot

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program, utilizing existing expertise on such trap and barge programs as may be available. Such plan shall detail a schedule and budget for the program, and identify the responsible parties for each element of the program.

(2) The Assistant Administrator shall provide an opportunity for 30 days of public review and comment on the pilot program and also simultaneously seek an expeditious independent peer review of the program to improve its rigor and likelihood of success.

(3) Within 60 days of ~~Upon~~ completion of (2), above, the Assistant Administrator shall complete the necessary design and evaluations of the pilot program and seek such ~~authorizations and permits~~ or other regulatory authorizations as may be required under federal law for its prompt implementation and evaluation by the Assistant Administrator, the Commissioner or such other parties as they determine most suitable.

(4) ~~Subject to the availability of funding,~~ The Assistant Administrator and the Commissioner shall seek to commence implementation of the pilot program in 2015 or as soon thereafter as is possible, and shall conduct such pilot for such period of time as needed to evaluate the efficacy of the program to improve survivals across a range of environmental conditions.

(5) The Assistant Administrator and the Commissioner shall jointly report annually to the Senate Environment and Public Works Committee and the House Committee on Natural Resources their progress in implementing this section, estimated survival rates through the Delta for both juvenile salmonids that were barged through the Delta and those that were not barged, and if survival rates are significantly higher for barged fish as compared to other outmigrating smolts, the Assistant Administrator's and Commissioner's recommendations regarding broadening the pilot program and any relevant recommendations pursuant to section 203.

(b) Tagging studies.

(1) IN GENERAL.—The Assistant Administrator, in collaboration with other ~~Delta-Delta~~ science partners, shall implement tagging studies, including acoustic telemetry and PIT tagging studies as appropriate, wherein habitat, predators, flow conditions, or other factors are experimentally altered and the behavior and survival of tagged juvenile salmonids are observed. Studies may also be conducted to aid in the understanding of Chinook salmon and steelhead abundance, distribution, and survival.

(2) SAMPLING.—The sampling—

(A) shall include recording water quality and tidal data;

(B) will be designed to aid in the understanding of salmonid abundance, distribution, and movements throughout the Bay Delta, including estimates of through Delta survival from Knights Landing or from Mossdale to Chipps Island; and

(C) will supplement, not supplant, ongoing acoustic tag and coded wire survival studies in the San Joaquin and Sacramento Rivers which the Assistant Administrator determines are crucial for trend monitoring.

(c) The Assistant Administrator shall accept recommendations from CVP and SWP service area water contractors on studies of other alternative management measures that may increase the survival of listed salmonid species.

Commented [A10]: This looks like it is designed to bog down the entire process. Suggest keeping the previous version of Sec. 202.

SEC. 203. PROCESS FOR ENSURING SALMONID  
MANAGEMENT IS RESPONSIVE TO NEW SCIENCE.

(a) General directive. The reasonable and prudent alternative described in the salmonid biological opinion allows for and anticipates adjustments in project operation parameters operating criteria to reflect the best scientific and commercial data currently available, and authorizes efforts to test and evaluate improvements in operations that will meet applicable regulatory requirements and maximize enable improvements in water supply reliability. Implementation of the reasonable and prudent alternative described in the salmonid biological opinion shall be adjusted accordingly as new scientific and commercial data are developed. The Commissioner and the Assistant Administrator shall fully are hereby directed to utilize these authorities fully as described below.

(b) Annual reviews of certain project operation operating criteria. No later than December 31, 2015, and at least annually thereafter,

(1) The Commissioner, in consultation with and with the assistance of the Assistant Administrator shall commence annual efforts to examine and identify adjustments to the initiation of Action IV.2.3 pertaining to negative OMR flows, subject to paragraph (5).

(2) The Commissioner, in consultation with and with the assistance of the Assistant Administrator, shall examine and identify adjustments in the timing, triggers or other operational details relating to the implementation of pumping restrictions in Action IV.2.1 pertaining to the inflow to export requirements, subject to paragraph (5).

(3) Pursuant to the consultation and assessments carried out under paragraphs (1) and (2) of this subsection, the Commissioner and the Assistant Commissioner shall jointly make recommendations to the Assistant Administrator Secretary of the Interior and to the Secretary of Commerce on adjustments to project operations that, in the exercise of the adaptive management provisions of the salmonid biological opinion, can improve water supply will reduce water supply impacts of the salmonid biological opinion on the Central Valley Project and the California State Water Project and are consistent with the requirements of applicable law and as further described in subsection (c).

(4) The Secretary of Commerce and the Secretary of the Interior shall direct the Commissioner and Assistant Administrator to shall implement those recommended adjustments to project operations for which the conditions under subsection (c) are met.

(5) The Assistant Administrator and the Commissioner shall review and identify adjustments to project operations with water supply restrictions in any successor biological opinion to the salmonid biological opinion, applying the provisions of this section to those water supply restrictions where there are references to Actions IV.2.1 and IV.2.3.

(c) Adjustments to project operations that shall be implemented. After in receiving reviewing the recommendations under subsection (b), the Secretary of the Interior and the Secretary of Commerce secretaries shall direct the Commissioner and the Assistant Administrator to implement those operational adjustments recommendations the Assistant Administrator shall evaluate the effects of the recommended adjustments on listed species and shall recommend to the Commissioner adjustments for which in aggregate:

(1) the net effect on listed species is equivalent to those of the underlying project

Commented [A11]: McCarthy's edits say "to implement those recommendations." A decision should be made on which language to use.

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operational parameters in the salmonid biological opinion, taking into account both

(i) efforts to minimize the adverse effects of the adjustment to project operations; and

(ii) whatever additional actions or measures may be implemented in conjunction with the adjustments to operations to offset the adverse effects to listed species, consistent with (d), that are in excess of the adverse effects of the underlying operational parameters, if any; and mitigate its effects, any.

(4)(2) the effects of the adjustment can be reasonably expected to fall within the incidental take authorizations.

(d) ~~Taking into account offsetting species survival benefits from other measures.~~

(1)-When examining and identifying opportunities to offset the potential adverse effect of adjustments to operations under subsection (c)(1)(ii), the Commissioner and the Assistant Administrator shall take into account the potential species survival improvements that are likely to result from other measures which, if implemented in conjunction with such adjustments, would offset adverse effects, if any, of the adjustments. When evaluating offsetting measures, the Commissioner and the Assistant Administrator shall consider the type, timing and nature of the adverse effects, if any, to specific species and ensure that the measures likely provide equivalent overall benefits to the listed species in the aggregate, as long as the change will not cause a significant negative impact on the long-term survival of a listed salmonid species.

(e) Framework for examining opportunities to minimize or offset the potential adverse effect of adjustments to operations opening criteria. Not later than December 31, 2015, and every five years thereafter, the Assistant Administrator shall, in collaboration with the Director of the California Department of Fish and Wildlife, based on the best scientific and commercial data available and for each listed salmonid species, issue estimates of the increase in through-Delta survival the Secretary expects to be achieved—

(1) ~~with-through restrictions on export pumping rates restrictions~~ as specified by Action IV.2.3 as compared to limiting OMR flow to a fixed rate of -5000 cubic feet per second within the time period Action IV.2.3 is applicable, based on a given rate of San Joaquin River inflow to the Delta and holding other relevant factors constant;

(2) ~~with-through~~ San Joaquin River inflow to export restrictions ~~on export pumping rates~~ specified within Action IV.2.1 as compared to the ~~export~~ restrictions in the April/May period imposed by the State Water Resources Control Board decision D-1641, based on a given rate of San Joaquin River inflow to the Delta and holding other relevant factors constant;

(3) ~~by through~~ a trap and barge program based on the experience of other systems to the extent they are comparable, and the study described in section 202, as that information becomes available;

(4) through physical habitat restoration improvements;

(5) through predation control programs;

(6) through the installation of temporary barriers, the management of Cross Channel

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Gates operations and other projects affecting flow in the Delta;

(7) ~~be through~~ salvaging fish that ~~may be~~ ~~have been~~ entrained near the entrance to Clifton Court Forebay; and

Commented [A12]: I d prefer to make this a quantifiable figure

(8) ~~through by~~ any other management measures that may provide equivalent or better ~~protections benefits~~ for listed species- ~~while maximizing export pumping rates without causing a significant negative impact on the long-term survival of a listed salmonid species/species with improvements to water supplies.~~

(9) ~~through development and implementation of conservation hatchery programs for salmon and steelhead to aid in the recovery of listed salmon and steelhead species.~~

(f) Survival estimates ~~as be quantitative to the maximum extent feasible.~~

(1) ~~To the maximum extent feasible, if the Assistant Administrator shall make these quantitative estimates of survival and determinations quantitative to the maximum extent feasible~~ such as a range of percentage increases in through-Delta survival that could result from the management measures, and if the scientific information is lacking for quantitative estimates, shall do so on qualitative terms based upon the best available science.

(2) If the Assistant Administrator provides qualitative ~~survival~~ estimates ~~for a~~ species ~~resulting~~ from one or more management measures, the Secretary shall, to the maximum extent feasible, rank the management measures described in subsection (e) in terms of their most likely expected contribution to increased through-Delta survival relative to the other measures.

(3) If at the time the Assistant Administrator conducts the analysis under subsection (b), the Secretary has not issued ~~an and estimate~~ of increased through-Delta survival ~~benefits~~ from different management measures pursuant to subsection (e), the Secretary shall compare the ~~protections benefits~~ to the species from different management measures based on the best scientific and commercial data available at the time.

(g) Comparison of adverse consequences for alternative management measures of ~~equivalent equal protection for a species/benefit to the salmon.~~ —

(1) For the purposes of this subsection ~~and subsection (e)~~ —

(A) The alternative management measure or combination of alternative management measures identified in paragraph (2) shall be known as the “equivalent alternative measure.”

(B) The existing measure or measures identified in subparagraphs (2)(A),(B),(C), or (D) shall be known as the “equivalent existing measure.”

(C) An “equivalent increase in through-Delta survival rates for listed salmonid species” shall mean an increase in through-Delta survival rates that is equivalent when considering the change in through-Delta survival rates for the listed salmonid species in the aggregate, and not ~~necessarily~~ the same change for each individual species, as long as the change in survival rates ~~will not cause a significant negative impact on the long-term survival of a listed salmonid species for each species remains consistent with law Endangered Species Act and implementing regulations.~~

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(2) As part of the reviews ~~of project operations pursuant~~ to subsection (b), the Assistant Administrator shall determine whether any alternative management measures or combination of alternative management measures listed in subsection (e)(3) through (8) would provide an increase in through-Delta survival rates for listed salmonid species that is equivalent to the increase in through-Delta survival rates for listed salmonid species from the following:

(A) ~~through restrictions on export pumping rates with export restrictions as~~ specified by Action IV.2.3, as compared to limiting OMR flow to a fixed rate of -5000 cubic feet per second within the time period Action IV.2.3 is applicable;

(B) ~~through restrictions on export pumping rates with export restrictions as~~ specified by Action IV.2.3, as compared to a modification of Action IV.2.3 that would provide additional water supplies, other than that described in subparagraph (A);

(C) ~~through with~~ San Joaquin River inflow to export restrictions ~~on export pumping rates~~ specified within Action IV.2.1, as compared to the ~~export~~ restrictions in the April/May period imposed by the State Water Resources Control Board decision D-1641, or

(D) ~~through~~ San Joaquin River inflow to export restrictions ~~on export pumping rates~~ specified within Action IV.2.1, as compared to a modification of Action IV.2.1 that would ~~reduce water supply impacts of the salmonid biological opinion on the Central Valley Project and the California State Water Project,~~ other than that described in subparagraph (C).

(3) If the Assistant Administrator identifies an equivalent alternative measure pursuant to paragraph (2), the Assistant Administrator shall determine whether

(A) it is technically feasible and within federal jurisdiction to implement the equivalent alternative measure, ~~and~~

~~(B) the State or local agency with jurisdiction has certified in writing to the Assistant Administrator that it has the authority and capability to implement the pertinent equivalent alternative measure, or~~

~~(C)~~ the adverse consequences of doing so are less than the adverse consequences of the equivalent existing measure, including a concise evaluation of the adverse consequences to other affected interests.

(4) If the Assistant Administrator makes the findings in subparagraph (3)(A) and (B), the ~~Assistant Administrator and the Commissioner shall adjust project operations, the operating criteria in the salmonid biological opinion pursuant to this subsection to implement the equivalent alternative measure in place of the equivalent existing measure in order to increase export rates of pumping water supplies to the greatest extent possible while maintaining a net combined effect of equivalent through-Delta survival rates for the listed salmonid species.~~

(h) Tracking adverse effects beyond the range of effects accounted for in the salmonid biological opinion and coordinated operation with ~~the~~ smelt biological opinion.



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(1) Among the adjustments to the project operations considered through the adaptive management process under this section, the Assistant Administrator and the Commissioner shall

(A) Evaluate the effects on listed salmonid species and water supply of the potential adjustment to operational criteria described in subparagraph (B); and

(B) Consider requiring that before some or all of the provisions of Actions IV.2.1. or IV.2.3 are imposed in any specific instance, the Assistant Administrator show that the implementation of these provisions in that specific instance is necessary to avoid significant negative impact on the long-term survival of a listed salmonid species, additional adverse effects upon listed salmonid species beyond the range of effects analyzed and accounted for in the salmonid biological opinion

(2) The Assistant Administrator, the Director and the Commissioner, in coordination with State officials as appropriate, shall establish operational criteria to coordinate management of OMR flows under the smelt and salmonid biological opinions, in order to take advantage of opportunities to provide additional water supplies from the coordinated implementation of the biological opinions.

(i) Real-Time Monitoring and Management. The Assistant Administrator and the Commissioner shall, through the NMFS adaptive management salmonid biological opinion provisions, analyze whether date-certain triggers that limit OMR reverse flow to -5000 cubic feet per second could be adjusted to instead use real-time migration information on salmonids. If the analysis shows that the use of real-time information to trigger OMR flow limitations would improve water supply without causing significant negative impact on the long-term survival of Winter-run Chinook salmon, then such real-time management triggers shall be implemented.

(f) If the quantitative estimates of through-Delta survival established by the Secretary for the management measures in (b)(2) exceed the through-Delta survival established for the RPAs, the Secretary shall implement the management measures in (b)(2) as a prerequisite to implementing the RPAs contained in the BiOps.

(k) Consistent with Section 706 of Title 5 of the United States Code, decisions of the Assistant Administrator and the Commissioner described in paragraphs (b) through (j) of this Section 203 shall be made in writing, on the basis of best scientific and commercial data currently available, and shall document the significant facts upon which such decisions are made.

## SEC. 204. PILOT PROGRAM TO PROTECT NATIVE ANADROMOUS FISH IN THE STANISLAUS RIVER.

(a) Establishment of Non-native Predator Fish Removal Program- The Assistant Administrator and districts in consultation with the United States Fish and Wildlife Service and the California Department of Fish and Wildlife shall jointly develop and conduct a pilot non-native predator fish removal program to remove non-native striped bass, smallmouth bass, largemouth bass, black bass, and other non-native predator fishes from the Stanislaus River. The pilot program shall--

(1) be scientifically based;

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(2) include methods to quantify the number and size of predator fishes removed each year the impact of such removal on the overall abundance of predator fishes and the impact of such removal on the populations of juvenile anadromous fish found in the Stanislaus River by, among other things evaluating the number of juvenile anadromous fish that migrate past the rotary screw trap located at Caswell;

(3) among other methods, use wire fyke trapping, portable resistance board weirs, and boat electrofishing which are among the most effective predator collection techniques that minimize effects to native anadromous fish;

(4) be developed including the application for all necessary scientific research and species enhancement permits under section 10(a)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)), for the performance of the pilot program, not later than 6 months after the date of the enactment of this Act;

(5) be implemented as quickly as possible following the issuance of all necessary scientific research and species enhancement permits needed to begin the pilot program; and

(6) be implemented for a period of seven consecutive calendar years.

(b) Management- The management of the pilot program shall be the joint responsibility of the Assistant Administrator and the districts. Such parties shall work collaboratively to ensure the performance of the pilot program and shall discuss and agree upon among other things changes in the structure management personnel techniques strategy data collection reporting and conduct of the pilot program.

(c) Conduct-

(1) IN GENERAL- At the election of the districts the pilot program may be conducted by their own personnel qualified private contractors hired by the districts personnel of on loan to or otherwise assigned to NOAA Fisheries, or a combination thereof

(2) PARTICIPATION BY NOAA FISHERIES- In the event the districts elect to conduct the program using their own personnel or qualified private contractors hired by them, the Assistant Administrator has the option to assign an employee of on loan to or otherwise assigned to NOAA Fisheries to be present for all activities performed in the field. Such presence shall ensure compliance with the agreed upon elements specified in subsection (b). The districts shall pay 100 percent of the cost of such participation as specified in subsection (d).

(3) TIMING OF ELECTION- The districts shall notify the Assistant Administrator of their election on or before October 15 of each calendar year of the pilot program, which election shall apply to the work performed in the subsequent calendar year.

(d) Funding-



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1 (1) CONTRIBUTED FUNDS- The Assistant Administrator is authorized to receive and expend  
2 contributed funds for the purposes for which the funds contributed in a like manner as if said  
3 sums had been specifically appropriated for said purposes.

4 (2) ANNUAL FUNDING- The districts shall be responsible through contributed funds for 100  
5 percent of the cost of the pilot program. On or before December 1 of each year of the pilot  
6 program, the Assistant Administrator shall submit to the districts an estimate of the cost to be  
7 incurred by the NOAA Fisheries in the following calendar year if any including the cost of any  
8 data collection and posting under subsection (e). If an amount equal to the estimate is not  
9 provided through contributed funds, or any other fund as directed by the Assistant  
10 Administrator by the districts on or before December 31 of each year (a) the NOAA Fisheries  
11 shall have no obligation to conduct the pilot program activities otherwise scheduled and (b) the  
12 districts shall be prohibited from conducting any aspect of the pilot program, until full payment  
13 is made by the districts.

14 (3) ACCOUNTING- On or before September 1 of each calendar year, the Assistant Administrator  
15 shall provide an accounting of the prior calendar year's expenses to the districts. If the estimate  
16 paid by the districts was less than the actual costs incurred by the NOAA Fisheries the districts  
17 shall have until September 30 of that calendar year to pay the difference to the fund identified  
18 by the Assistant Administrator in subsection (d)(1), or NOAA Fisheries shall have no obligation to  
19 conduct the pilot program activities otherwise scheduled. If the estimate paid by the districts  
20 was greater than the actual costs incurred by the NOAA Fisheries then a credit shall be provided  
21 to the districts, which shall be deducted from the estimate payment the districts must make for  
22 the work performed by the NOAA Fisheries if any in the next calendar year.

23 Administrator, by the districts on or before December 31 of each year, (a) the NOAA Fisheries  
24 shall have no obligation to conduct the pilot program activities otherwise scheduled, and (b) the  
25 districts shall be prohibited from conducting any aspect of the pilot program until full payment  
26 is made by the districts.

27 (e) Reporting and Evaluation-

28 (1) IN GENERAL- On or before the 15th day of each month the Assistant Administrator shall post  
29 on the website of the NOAA Fisheries a tabular summary of the raw data collected in the prior  
30 month.

31 (2) REPORT- On or before June 30 of the calendar year following the completion of the program  
32 the Assistant Administrator and districts shall jointly publish a peer reviewed report that--

33 (A) discusses the findings and conclusions of the pilot program;

34 (B) synthesizes the data collected under paragraph (1); and

35 (C) makes recommendations for further study and action.

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(f) Permits Process-

(1) Not later than 180 days after filing of an application Assistant Administrator and the districts, the Secretary of the Interior the Secretary of Commerce or both as appropriate shall issue all necessary scientific research and species enhancement permits under section 10(a)(1) of the Endangered Species Act (16 U.S.C. 153(9)(a)(1)), for the performance of the pilot program.

(3) All permits issued shall be in the name of the NOAA Fisheries and the districts.

(4) Districts may delegate the authority to administer the permit authority to any qualified private contractor retained in accordance with subsection (c).

(5) The pilot program including amendments thereto by the appropriate Federal and State agencies, shall constitute a conservation plan that complies with the requirements of section 10(a)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(2)).

(g) NEPA.--Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) shall not apply with respect to section 402 and the issuance of any permit under this subsection during the seven year period beginning on the date of the implementation of the pilot program.

(h) Emergency Environmental Reviews – To expedite this environmentally beneficial program for the conservation of threatened and endangered species the Secretary of the Interior shall consult with the Council on Environmental Quality in accordance with Section 1506.11 of title 40, Code of Federal Regulations (including successor regulations) to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 for this section.

(i) Definitions- For the purposes of this section:

(1) ASSISTANT ADMINISTRATOR- The term 'Assistant Administrator' means the Assistant Administrator of National Oceanic and Atmospheric Administration, NOAA Fisheries

(2) DISTRICTS- The term 'districts' means the Oakdale Irrigation District and the South San Joaquin Irrigation District

(3) PILOT PROGRAM- The term 'program' means the pilot non-native predator removal program established under this section.

(j) Sunset- The authorities provided under this section shall expire seven years after the implementation of the pilot program.

1 **SEC. 205. CALFED INVASIVE SPECIES PILOT PROJECTS**  
2 **IN THE SACRAMENTO-SAN JOAQUIN BAY DELTA AND**  
3 **ITS TRIBUTARIES.**

4 (a) FINDINGS.—Congress finds that—

5 (1) The Sacramento-San Joaquin Bay Delta and its Tributaries—

6 (A) is one of the largest and most diverse estuaries in the United States,

7 (B) is a natural treasure and a vital link in California’s water system, and

8 (C) has native biodiversity important to the ecological and economic systems of  
9 California, including water deliveries to agriculture, municipalities and to the  
10 environment and fisheries industries, and

11 (D) has river tributaries important for rearing of salmon and steelhead smolts which  
12 experience a high level of predation from non-native species.

13 (2) Past, present and future introductions of invasive species are and will be a major  
14 factor in the decline of native pelagic and anadromous endangered or threatened species in  
15 the Sacramento–San Joaquin Bay Delta and its tributaries.

16 (3) More than 250 nonnative aquatic and plant species have been introduced into the  
17 Delta and its tributaries; of these, at least 185 species have become established and have  
18 altered the Sacramento-San Joaquin Bay Delta watershed’s ecosystem.

19 (4) The Bay Delta Conservation Plan, the Recovery Plan for the Evolutionarily  
20 Significant Units of Sacramento River Winter-run Chinook Salmon and Central Valley  
21 Spring-run Chinook Salmon and the Distinct Population Segment of the Central Valley  
22 Steelhead, the Recovery Plan for the Sacramento-San Joaquin Delta Native Fishes, and the  
23 multiple 5 year reviews of those plans all highlight that introduced nonnative invasive  
24 species are a significant factor in the decline of native fish species. These nonnative species,  
25 which include invasive aquatic vegetation, predators, and competitors, directly or indirectly  
26 cause biological stress for pelagic and anadromous endangered or threatened fish species in  
27 the Sacramento-San Joaquin Bay-Delta and its tributaries.

28 (5) If threats by nonnative species to native fish species are not addressed, there is a  
29 probability that native species of the Sacramento-San Joaquin Bay-Delta watershed’s  
30 pelagic and anadromous community will go extinct.

31 (6) The CALFED legislation (Public Law 108-361) authorized a program to prevent,  
32 control, and eradicate invasive species, but it has not been implemented to date.

33 (7) A focused pilot program needs to be conducted within the Delta and river tributaries  
34 to reduce threats to native listed species by nonnative species. Reducing nonnative stressors  
35 on native listed species will contribute to both native listed species recovery and lowering  
36 the impact on downstream water users as those native listed species recover.

37 (b) PILOT PROJECTS TO IMPLEMENT CALFED INVASIVE SPECIES PROGRAM.

38 (1) Not later than January 1, 2017, the Secretary of the Interior, in collaboration with the  
39 Secretary of Commerce and the Director of the California Department of Fish and Wildlife,

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1 may begin pilot projects to implement the invasive species program, including prevention,  
2 control and eradication authorized pursuant to Section 103(d)(6)(A)(iv) of Public Law 108-  
3 361. The pilot projects shall:

4 (A) seek to reduce invasive aquatic vegetation, predators, and other competitors  
5 which are major factors in the decline of native listed pelagic and anadromous species  
6 that occupy the Sacramento and San Joaquin Rivers and their tributaries and the  
7 Sacramento-San Joaquin Bay-Delta; and

8 (B) address how to remove, reduce, or control the effects of species including:  
9 Asiatic clams, silversides, gobies, Brazilian water weed, largemouth bass, smallmouth  
10 bass, striped bass, crappie, bluegill, white and channel catfish, and brown bullheads.

11 (2) The Secretary of the Interior's efforts, in consultation with the Secretary of  
12 Commerce, shall consist of the following phases:

13 (A) Phase 1. The Secretary of the Interior shall convene a panel of experts,  
14 including experts recommended by the State of California, to:

- 15 (i) Identify the non-native species having the greatest impact on the  
16 viability of native pelagic and anadromous native listed species; and  
17 (ii) Identify the non-native species for which actions to reduce or control the  
18 population is determined to be possible; and  
19 (iii) Design a study to reduce the non-native species identified in clauses (i)  
20 and (ii) and prepare a cost estimate to implement this study.

21 (B) Phase 2. The Secretary of the Interior, in consultation with the Secretary of  
22 Commerce, shall test the general viability of nonnative reduction methods, including  
23 either direct predator removal or alteration of channel conditions, or some combination  
24 thereof, through pilot projects at multiple sites in addition to the projects on the  
25 Stanislaus River pursuant to Section 204, including known hotspots of predator  
26 aggregation or activity, such as:

- 27 (i) Clifton Court Forebay,  
28 (ii) Central Valley Project intakes,  
29 (iii) Head of Old River,  
30 (iv) Georgiana Slough,  
31 (v) Old and Middle Rivers,  
32 (vi) Franks Tract,  
33 (vii) Paintersville Bridge,  
34 (viii) individual river tributaries important for wild populations of  
35 anadromous species listed as threatened or endangered under the Endangered  
36 Species Act of 1973,  
37 (ix) Human-made submerged structures, and  
38 (x) Salvage release sites.

**Commented [A13]:** Awaiting feedback from the agencies on whether the experts in an existing predation workshop would address the items outlined in clauses (i) through (iii) of subparagraph (A) in the proposed text.

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(C) Phase 3. If ~~determined to be effective~~, the Secretary of the Interior ~~and the Secretary of Commerce~~ shall implement nonnative reduction methods at a larger number of sites, incorporating information learned during the first and second phase.

(3) The Secretary of the Interior shall collect data associated with the implementation of the projects above, and shall specifically collect data on the impact on

(A) pelagic and anadromous species listed as threatened or endangered under the Endangered Species Act of 1973,

(B) water quality, and

(C) water supply.

(4) After assessing the data described in subparagraph (2), the Secretary of the Interior, in collaboration with the Secretary of Commerce and the Director of the California Department of Fish and Wildlife, shall, if appropriate, annually recommend revisions to the reasonable and prudent alternatives contained in the salmonid biological opinion and the smelt biological opinion, or other administrative federal requirements governing the operation of the Central Valley Project and the State Water Project, that are likely to produce additional fishery, water quality, and water supply benefits.

~~(5) After the pilot projects are complete, a report describing the results of the program shall be used by the Assistant Administrator in making the survival estimates required by Section 203(f).~~

(c) IMPLEMENTATION. The Secretary of the Interior shall implement the CALFED program described in subpart (b) for at least a period of seven consecutive years beginning on the date of implementation.

(d) REPORTING REQUIREMENTS. The Secretary of the Interior shall provide reports to the Senate Committee on Environment and Public Works and the House Committee on Natural Resources on the following:

(1) No later than January 1, 2016, a description of the projects described in subpart (b), including the application for all necessary scientific research and species enhancement permits under section 10(a) (1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)), and for the performance of the CALFED invasive species Program.

(2) Upon the completion of Phase 1 as described in subsection (b)(1)(A), a report describing its implementation and cost effectiveness.

(3) Two years after the project begins, a report describing the progress of the eradication of the nonnative species in the Sacramento-San Joaquin Bay-Delta and its tributaries and how such efforts have helped the Recovery Plans for endangered and threatened Anadromous and Pelagic Species in the Sacramento-San Joaquin Bay-Delta watershed and the associated cost effectiveness of each control measure.

(4) After the pilot projects are complete, a report describing the results of the program, including recommendations on whether the program should be continued, how the program may be taken to full scale in the most cost effective manner, and how a mitigation program for the Central Valley Project allowable under section 10(a)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)) could be implemented.

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(e) EMERGENCY ENVIRONMENTAL REVIEWS. To expedite this environmentally beneficial program for the conservation of threatened and endangered species, the Secretary of the Interior shall consult with the Council on Environmental Quality in accordance with section 1506.11 of title 40, Code of Federal Regulations (including successor regulations) to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 for this program.

~~SEC. 206. MARK FISHERY AND HARVEST  
MANAGEMENT.~~

Commented [A14]: Kern supports going back to the original Feinstein proposal for this section.

TITLE III—OPERATIONAL FLEXIBILITY AND DROUGHT  
RELIEF

SEC. 301. FINDINGS.

Congress finds that—

(1) Based on the congressional findings in Sec. 2 of this Act, it is appropriate and necessary for federal agencies to exercise the maximum amount of flexibility provided to them under the applicable laws and regulations to maximize delivery of water supplies while providing substantially similar levels of protection

SEC. 302. DEFINITIONS.

In this title:

(1) CENTRAL VALLEY PROJECT.—The term “Central Valley Project” has the meaning given the term in section 3403 of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4707).

(2) KLAMATH PROJECT.—The term “Klamath Project” means the Bureau of Reclamation project in the States of California and Oregon, as authorized under the Act of June 17, 1902 (32 Stat. 388, chapter 1093).

(3) RECLAMATION PROJECT.—The term “Reclamation Project” means a project constructed pursuant to the authorities of the reclamation laws and whose facilities are wholly or partially located in the State.

(4) SECRETARIES.—The term “Secretaries” means—

(A) the Administrator of the Environmental Protection Agency;

(B) the Secretary of Agriculture;

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(C) the Secretary of Commerce; and

(D) the Secretary of the Interior.

(5) STATE WATER PROJECT.—The term “State Water Project” means the water project described by California Water Code section 11550 et seq., and operated by the California Department of Water Resources.

(6) State.—The term “State” means the State of California.

## SEC. 303. OPERATIONAL FLEXIBILITY IN TIMES OF DROUGHT.

### (a) Water Supplies.—

(1) IN GENERAL.—In response to a declaration of a state of drought emergency by the Governor of California and for the period of time such a drought declaration remains in effect, or as long as 90% of the state remains in a “moderate drought” as determined by the U.S. Drought monitor, the Secretaries shall provide the maximum quantity of water supplies practicable to Central Valley Project agricultural, municipal and industrial, and refuge service and repayment contractors, State Water Project contractors, and any other tribe, locality, water agency, or municipality in the State, by approving, consistent with applicable laws (including regulations), projects and operations to provide additional water supplies as quickly as practicable based on available information to address the emergency conditions.

(2) APPLICATION.—Paragraph (1) applies to projects or operations involving the Klamath Project if the projects or operations would benefit Federal water contractors in the State

**Commented [A15]:** McCarthy Reads: For the period of time such that in any year that the Sacramento Valley Index is 6.5 or lower, or at the request of the State of California, and for the succeeding two years following either of those events the Secretaries.....

**Commented [A16]:** There are conflicting edits between Mr. Valadao, Mr. McClintock, and Mr. McCarthy. Needs to be resolved.

**Commented [A17]:** Is there any way this could be interpreted to involve dam removal? I don't think it does, but I m not entirely up to snuff on all things Klamath. If so, I d like to add a provision that prohibits dam removal.

(b) Administration.—In carrying out subsection (a), the Secretaries shall, consistent with applicable laws (including regulations)—

(1) issue all necessary permit decisions under the authority of the Secretaries not later than 30 days after the date on which the Secretaries receive a completed application from the State to place and use temporary barriers or operable gates in Delta channels to improve water quantity and quality for the State Water Project and the Central Valley Project south of Delta water contractors and other water users, on the condition that the barriers or operable gates—

(A) do not result in a significant negative impact on the long-term survival of listed species within the Delta and provide benefits or have a neutral impact on for species protection and in-Delta water user water quality; and

(B) are designed so that formal consultations under section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) are not necessary;

(2) require the Director of the United States Fish and Wildlife Service and the Commissioner of Reclamation—

(A) to complete, not later than 30 days after the date on which the Director or the Commissioner receives a complete written request for water transfer associated with voluntarily following nonpermanent crops in the State, all requirements under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) necessary to make final



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permit decisions on the request; and

(B) to grant any water transfer request described in subparagraph (A) to maximize the quantity of water supplies available for nonhabitat uses, on the condition that the following and associated water transfer are in compliance with applicable Federal laws (including regulations);

(3) adopt a 1:1 inflow to export ratio

, as measured as a 3-day running average at Vernalis during the period beginning on April 1, and ending on May 31, ~~absent a determination in writing that a more restrictive inflow to export ratio is required to avoid a significant negative impact on the long-term survival of a listed salmonid species, provided that the a 1:1 inflow to export ratio shall apply for the increment of increased flow of the San Joaquin River resulting from the voluntary sales, transfers, or exchanges of water from agencies with rights to divert water from the San Joaquin River or its tributaries, provided that Delta conditions are suitable to allow movement of the acquired, transferred, provided that Delta conditions are suitable to allow movement of the acquired, transferred, provided that Delta conditions are suitable to allow movement of the acquired, transferred, or exchanged water through the Delta consistent with the Central Valley Project's and the State Water Project's permitted water rights.~~ Notwithstanding limitations on water transfers established by the United States Bureau of Reclamation's Biological Assessment dated August 2008, the smelt biological opinion, salmonid biological opinion, or any amendments to the foregoing, water transfers through the C.W. "Bill" Jones Pumping Plant or the Harvey O. Banks Pumping Plant may occur during any month provided water transfers comply with state law, including the California Environmental Quality Act; and

(4) Provide additional priority for eligible ~~WaterSMART Reclamation~~ projects that address drought conditions including projects that—

(A) provide emergency drinking and municipal water supplies to localities in a quantity necessary to meet minimum public health and safety needs;

(B) prevent the loss of permanent crops;

(C) minimize economic losses resulting from drought conditions; or

(D) provide innovative ~~water conservation~~ tools and technology for agriculture and urban water use that can have immediate water supply benefits.

(c) Accelerated Project Decision and Elevation.—

(1) IN GENERAL.— On request by the Governor of the State, the heads of Federal agencies shall use the expedited procedures under this subsection to make final decisions relating to ~~local, state, or~~ Federal project or operation, ~~or to local or State projects or operations that require decisions by the Secretary of the Interior or the Secretary of Commerce to provide additional water supplies~~ if the project's or operation's purpose is to provide relief for emergency drought conditions pursuant to subsections (a) and (b).

(2) REQUEST FOR RESOLUTION.—

(A) IN GENERAL.—On request by the Governor of the State, the head of a Federal

Commented [A18]: Conflicting edits between Valadao and McCarthy. McCarthy's reads. Adds

(4) allow and facilitate, consistent with existing priorities, water transfers through the C.W. "Bill" Jones Pumping Plant or the Harvey O. Banks Pumping Plant from April 1 to November 30 provided water transfers comply with state law, including the California Environmental Quality Act.

Commented [A19]: Should we identify that we are only talking about grants made to California?

Commented [A20]: Conflicting edits by Valadao and McCarthy.



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agency referenced in paragraph (1), or the head of another Federal agency responsible for carrying out a review of a project, as applicable, the Secretary of the Interior shall convene a final project decision meeting with the heads of all relevant Federal agencies to decide whether to approve a project to provide relief for emergency drought conditions.

(B) MEETING.—The Secretary of the Interior shall convene a meeting requested under subparagraph (A) not later than 7 days after the date on which the meeting request is received.

(3) NOTIFICATION.—On receipt of a request for a meeting under paragraph (2), the Secretary of the Interior shall notify the heads of all relevant Federal agencies of the request, including information on the project to be reviewed and the date of the meeting.

(4) DECISION.—Not later than 10 days after the date on which a meeting is requested under paragraph (2), the head of the relevant Federal agency shall issue a final decision on the project, subject to subsection (e)(2).

(5) MEETING CONVENED BY SECRETARY.—The Secretary of the Interior may convene a final project decision meeting under this subsection at any time, at the discretion of the Secretary, regardless of whether a meeting is requested under paragraph (2).

(d) Application.—To the extent that a Federal agency, other than the agencies headed by the Secretaries, has a role in approving projects described in subsections (a) and (b), this section shall apply to those Federal agencies.

(e) Limitation.—Nothing in this section authorizes the heads of applicable Federal agencies to approve projects—

(1) that would otherwise require congressional authorization; or

(2) without following procedures required by applicable law.

(f) ~~2015~~ Drought Plan. The Secretaries of Commerce and the Interior, in consultation with appropriate State officials, shall develop a drought operations plan for ~~the duration of the existing drought emergency declaration of the State and until two subsequent normal or above normal water years have been recorded within the Central Valley Project~~ ~~2016~~ that is consistent with the provisions of this section and other provisions of this Act intended to provide additional water supplies that could be of assistance during the current drought ~~and takes into account that drought conditions could persist into 2016~~.

Commented [A21]: My intention is to make them consider water reliability. Possibly trigger minimum carryover storage levels.

## SEC. 304. OPERATION OF CROSS-CHANNEL GATES.

(a) In General.—The Secretary of Commerce and the Secretary of the Interior shall jointly—

(1) authorize and implement activities to ensure that the Delta Cross Channel Gates remain open to the maximum extent practicable using findings from the United States Geological Survey on diurnal behavior of juvenal salmonids, timed to maximize the peak flood tide period and provide water supply and water quality benefits for the duration of the drought emergency declaration of the State ~~and until two subsequent normal or above normal water years have been recorded within the Central Valley Project~~, consistent with operational criteria and monitoring criteria developed pursuant to the Order Approving a Temporary Urgency Change in License and Permit Terms in Response to Drought

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Conditions of the California State Water Resources Control Board, effective January 31, 2014 (or a successor order) and other authorizations associated with it;

(2) with respect to the operation of the Delta Cross Channel Gates described in paragraph (1), collect data on the impact of that operation on—

(A) species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(B) water quality; and

(C) water supply;

(3) consistent with knowledge gained from activities carried out during 2014, collaborate with the California Department of Water Resources to install a deflection barrier at Georgiana Slough in coordination with Delta Cross Channel Gate diurnal operations to protect migrating salmonids;

(4) evaluate the combined salmonid survival in light of activities carried out pursuant to paragraphs (1) through (3) in deciding how to operate the Delta Cross Channel gates to enhance salmonid survival and water supply benefits; and

(5) not later than May 15, 2015, submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives a written report on the extent to which the gates are able to remain open.

(b) Recommendations.—After assessing the information collected under subsection (a), the Secretary of the Interior shall recommend revisions to the operation of the Delta Cross-Channel Gates, to the Central Valley Project, and to the State Water Project, including, if appropriate, any reasonable and prudent alternative contained in the biological opinion issued by the National Marine Fisheries Service on June 4, 2009, that are likely to produce water supply benefits without causing fishery jeopardy or negatively impacting water quality

The Secretary shall also coordinate with the State Water Resources Control Board to seek consistent direction for the operation of the Delta Cross-Channel Gates under federal and state law, including Water Right Decision 1641.

## SEC. 305. FLEXIBILITY FOR EXPORT/INFLOW RATIO.

In response to the declaration of a state of drought emergency by the Governor of California or as long as 90% of the state remains in a “moderate drought” as determined by the U.S. Drought Monitor and for the period of time such a drought declaration remains in effect, the Commissioner of the Bureau of Reclamation shall continue to vary the averaging period of the Delta Export/Inflow ratio pursuant to the California State Water Resources Control Board decision D1641 ~~approved in the March Temporary Emergency Change Order~~—

(1) to operate to a 35 percent Export/Inflow ratio with a 3 day averaging period on the rising limb of a Delta inflow hydrograph; and

(2) to operate to a 14 day averaging period on the falling limb of the Delta inflow hydrograph.

## SEC. 306. EMERGENCY ENVIRONMENTAL REVIEWS.

**Commented [A22]:** Conflicting edits of McCarthy and McClintock. McCarthy reads:

For the period of time such that in any year that the Sacramento Valley Index is 6.5 or lower, or at the request of the State of California, and for the succeeding two years following either of those events, the Commissioner.....

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To minimize the time spent carrying out environmental reviews and to deliver water quickly that is needed to address emergency drought conditions in the State during the duration of an emergency drought declaration, the head of each applicable Federal agency shall, in carrying out this Act, consult with the Council on Environmental Quality in accordance with section 1506.11 of title 40, Code of Federal Regulations (including successor regulations), to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) during the emergency.

**SEC. 307. PRIORITIZING STATE REVOLVING FUNDS DURING DROUGHTS.**

(a) In General.—This section shall apply for each of the fiscal years during which an emergency drought declaration of the State is in effect.

(b) The Administrator of the Environmental Protection Agency, in implementing the processes and programs under the State water pollution control revolving funds established under title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) and the State drinking water treatment revolving loan funds established under section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12), shall, for those projects that are eligible to receive assistance under section 603 of the Federal Water Pollution Control Act (33 U.S.C. 1383) or section 1452(a)(2) of the Safe Drinking Water Act (42 U.S.C. 300j–12(a)(2)),

(1) issue a determination of waivers within 30 days of the conclusion of the informal public comment period pursuant to section 436(c) of title IV of division G of Public Law 113–76; and

(2) authorize, at the request of the State, 40-year financing for assistance under section 603(d)(2) of the Federal Water Pollution Control Act (33 U.S.C. 1383(d)(2)) or section 1452(f)(2) of the Safe Drinking Water Act (42 U.S.C. 300j–12(f)(2)).

(c) Effect of Section.—Nothing in this section authorizes the Administrator of the Environmental Protection Agency to modify any funding allocation, funding criteria, or other requirement relating to State water pollution control revolving funds established under title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) and the State drinking water treatment revolving loan funds established under section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12) for any other State

Commented [A23]: Stupid

**SEC. 308. INCREASED FLEXIBILITY FOR REGULAR PROJECT OPERATIONS.**

The Secretaries shall, consistent with applicable laws (including regulations)—

(1) to the maximum extent practicable, based on the availability of water and without causing land subsidence or violating water quality standards—

(B) make available to individuals or districts who receive water from the United States under water rights settlement contracts, exchange contracts, water service or repayment contracts, Central Valley Project contractors, a quantity of Central Valley Project surface the additional water obtained from the activities carried out under subparagraph (A);

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(2) in coordination with the Secretary of Agriculture, enter into an agreement with the National Academy of Sciences to conduct a comprehensive study, to be completed not later than 1 year after the date of enactment of this Act, on the effectiveness and environmental impacts of saltcedar biological control efforts on increasing water supplies and improving riparian habitats of the Colorado River and its principal tributaries, in the State and elsewhere;

Commented [A24]: This should have its own section

(3) in coordination with the California Department of Water Resources and the California Department of Fish and Wildlife, implement offsite upstream projects in the Delta and upstream Sacramento River and San Joaquin basins that offset the effects on species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) due to activities carried out pursuant this Act, as determined by the Secretaries;

(4) manage reverse flow in the Old and Middle Rivers at -5,000 cfs as prescribed by the smelt biological opinion and the salmonids biological opinion, or any successor biological opinions, to maximize and the salmonids biological opinion, or any successor biological opinions, to maximize water supply reductions for the Central Valley Project and the State Water Project. Reductions in pumping to levels less negative than -5,000 cfs may be made subject to Sections 103(c)(3) and (4).

(5) as soon as practicable after the date of enactment of this Act and pursuant to existing authority available to the Secretary of the Interior, participate in, issue grants, or otherwise provide funding for pilot projects to increase water in reservoirs in regional river basins experiencing extreme, exceptional, or sustained drought that have a direct impact on the water supply of the State, including the Colorado River Basin, on the condition that any participation, grant, or funding by the Secretary of the Interior with respect to the Upper Division shall be with or to the respective State; and

Commented [A25]: This should be included in the saltcedar section.

(6) use all available scientific tools to identify any changes to real-time operations of the Bureau of Reclamation, State, and local water projects that could result in the availability of additional water supplies.

SEC. 309. TEMPORARY OPERATIONAL FLEXIBILITY  
FOR FIRST FEW STORMS DURING A DROUGH  
EMERGENCY OF 2015 WATER YEAR

(a) Findings:

(1) During the 2014 water year, operations of the Central Valley Project and the State Water Project, the incidental take of adult Delta smelt was zero; of juvenile Delta smelt, 78 (7.7% of the incidental take available); of winter run chinook, 339 (1.4% of the incidental



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take ~~total~~ of spring run chinook, zero; and of steelhead, 261 (8.7% of the incidental take ~~total~~).

(2) The Central Valley Project and State Water Project exceeded a ~~1~~ Old and Middle River flow of -5,000 cubic feet per second over a 14-day average for brief periods after three storm events in February and March 2014, as a result of increased pumping, but did not cause substantially increased take of smelt or salmon.

(3) Hydrological conditions in dry years, such as the 2014 water year, have not triggered water pumping restrictions pursuant to the ~~2008~~ smelt biological opinion.

(4) The Secretaries should be allowed more flexibility to increase pumping levels without causing significant risk to the listed species or weakening other environmental protections.

(5) ~~To address~~ California's severe drought conditions, significant groundwater withdrawals for irrigation due to lack of surface water supplies, and the depletion of water supplies in reservoirs, it is imperative that the Secretaries exercise for the duration of the existing drought emergency the flexibility provided herein to capture the maximum amount of flows resulting from storm events, and provide for the diversion of water to increase water supplies to the Central Valley Project and State Water Project so that farms, businesses, and homes in drought-stricken areas will have an opportunity to bolster their meager supplies when water is available.

~~(5)(6) It is reasonable to conclude that similar conditions will exist during future drought emergencies and regulatory relief during future first few storm events must be provided.~~

(b) In general, For the duration of a drought emergency, ~~Consistent with avoiding jeopardy in the short-term additional adverse effects,~~ upon listed fish species beyond the range of those authorized under the Endangered Species Act and other environmental protections under subsection (e), the Secretaries shall authorize the Central Valley Project and the State Water Project, combined, to operate at levels that result in negative Old and Middle River flows at ~~up to~~ -7500 cubic feet per second (based on United States Geological Survey gauges on Old and Middle Rivers) daily average for ~~up to 21-30~~ cumulative days after October 1, 2014, as described in subsection (c).

(c) Days of temporary operational flexibility. The temporary operational flexibility described in subsection (b) shall be authorized on days that the California Department of Water Resources determines the daily average river flow of the Sacramento River is at, or above, 17,000 cubic feet per second as measured at the Sacramento River at Freeport gauge maintained by the United States Geologic Survey.

(d) Compliance with ESA authorizations. In carrying out this section, the Secretaries may continue to impose any requirements under the smelt and salmon biological opinions during any period of temporary operational flexibility as they determine are reasonably necessary to avoid an additional adverse effects significant negative impacts on the long-term survival of a ~~jeopardy on~~ listed fish species beyond the range of those authorized under the Endangered Species Act.

(e) Other environmental protections.

Commented [A26]: Conflicting edits. McCarthy has 28 consecutive days.

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(1) The Secretaries' actions under this section shall be consistent with applicable regulatory requirements under state law, including State Water Resources Control Board Decision 1641, as it may be implemented in any given year;

(2) During the first flush of sediment out of the Delta, ~~in each water year~~ ~~during the 2015 water year~~, OMR flow may be managed at rates less negative than -5000 cubic feet per second for a minimum duration to avoid movement of adult ~~Delta-Delta~~ smelt (*Hypomesus transpacificus*) to areas in the southern Delta that would be likely to increase entrainment at Central Valley Project and State Water Project pumping plants;

(3) This section shall not ~~have any effect on the applicable requirements of~~ the salmonid biological opinion from April 1 to May 31, ~~unless the Secretary of Commerce finds that some or all of such applicable requirements may be adjusted during this time period to provide emergency water supply relief without resulting in additional adverse effects beyond those authorized under the Endangered Species Act.~~

(4) During operations under this section, the Commissioner of Reclamation, in coordination with the Fish and Wildlife Service, National Marine Fisheries Service, and California Department of Fish and Wildlife, shall undertake a monitoring program and other data gathering to insure ~~incidents~~ take levels are not exceeded, and to identify potential negative impacts and actions ~~if any~~, necessary to mitigate impacts of the temporary operational flexibility to ~~listed~~ species listed and

(5) The Commissioner is authorized to take any action, including the transfer of appropriated funds between accounts that, in the Commissioner's judgment, are necessary to mitigate the impacts of such operations as long as any such mitigation is consistent with the requirements of this section.

(f) Technical adjustments to target period. If, before temporary operational flexibility has been implemented on ~~21~~ ~~30~~ cumulative days, the Secretaries operate the Central Valley Project and the State Water Project combined at levels that result in Old and Middle River flows less negative than -7500 cubic feet per second during days of temporary operational flexibility as defined in subsection (c), the duration of such operation shall not be counted toward the ~~2~~ ~~3~~ consecutive cumulative days specified in subsection (b).

(g) Emergency consultation; effect on running averages.

(1) If necessary to implement the provisions of this section, the Commissioner shall use the emergency consultation procedures under the Endangered Species Act and its implementing regulation at 50 CFR 402.05 to temporarily adjust the operating criteria under the biological opinions,

(A) solely for the ~~28~~ consecutive days of temporary operational flexibility—

(i) ~~A~~ no more than necessary to achieve the purposes of this section consistent with the environmental protections in subsections (d) and (e); and

(ii) ~~B~~ including, as appropriate, adjustments to ensure that the actual flow rates during the periods of temporary operational flexibility do not count toward the 5-day and 14-day running averages of tidally filtered daily Old and Middle River flow requirements under the biological opinions, or

**Commented [A27]:** Exchange Contractors. This section states that the actions to provide flexibility and relief will not have any effect on the Salmon BO from April 1-May31 unless the Secretary of Commerce finds that by providing water supply relief, there will be no additional adverse effects beyond those authorized under the ESA. If water transfers were allowed during this period, it would be substantially help water supply. Consistent with the requirement for monitoring and objective science, the transfer window should be based on real-time monitoring rather than arbitrary calendar dates.

**Commented [A28]:** This edit conflicts with other edits to the days.

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(B) for other adjustments to operating criteria or to take other urgent actions to address water supply shortages for the least amount of time or volume of diversion necessary as determined by the Commissioner.

(2) Following the conclusion of the 11-28 consecutive days of temporary operational flexibility, the Commissioner shall not reinitiate consultation on these adjusted operations, and no mitigation shall be required if the effects on listed fish species of these operations under this section remain within the range of those authorized under the Endangered Species Act. If the Commissioner reinitiates consultation, no mitigation measures shall be required during the pendency of the drought emergency. Any mitigation measures imposed must be based on quantitative data and required only to the extent that such data demonstrates actual harm to species.

Commented [A29]: Conflicting edits

(h) Level of detail required for analysis. In articulating the determinations required under this section, the Secretaries shall fully satisfy the requirements herein but shall not be expected to provide a greater level of supporting detail for the analysis than feasible to provide within the short time frame permitted for timely decision-making in response to changing conditions in the Delta.

~~(4) Duration.—This section shall expire on September 30, 2015.~~

## SEC. 310. EXPEDITING WATER TRANSFERS.

(a) In General.—Section 3405(a) of the Central Valley Project Improvement Act (Public Law 102-575; 106 Stat. 4709(a)) is amended—

(1) by redesignating paragraphs (1) through (3) as paragraphs (4) through (6), respectively;

(2) in the matter preceding paragraph (4) (as so designated)—

(A) in the first sentence, by striking “In order to” and inserting the following:

“(1) IN GENERAL.—In order to”; and

(B) in the second sentence, by striking “Except as provided herein” and inserting the following:

“(3) TERMS.—Except as otherwise provided in this section”; and

(3) by inserting before paragraph (3) (as so designated) the following:

“(2) EXPEDITED TRANSFER OF WATER.—The Secretary shall take all necessary actions to facilitate and expedite transfers of Central Valley Project water in accordance with—

“(A) this Act;

“(B) any other applicable provision of the reclamation laws; and

“(C) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).”;

(4) in paragraph (4) (as so designated)—

(A) in subparagraph (A), by striking “to combination” and inserting “or combination”; and

(B) by striking “3405(a)(2) of this title” each place it appears and inserting “(5)”; and

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(5) in paragraph (5) (as so designated), by adding at the end the following:

“(E) The contracting district from which the water is coming, the agency, or the Secretary shall determine if a written transfer proposal is complete within 45 days after the date of submission of the proposal. If the contracting district or agency or the Secretary determines that the proposal is incomplete, the district or agency or the Secretary shall state with specificity what must be added to or revised for the proposal to be complete.”; and

(6) in paragraph (6) (as so designated), by striking “3405(a)(1)(A)-(C), (E), (G), (H), (I), (L), and (M) of this title” and inserting “(A) through (C), (E), (G), (H), (I), (L), and (M) of paragraph (4)”.

(b) Conforming Amendments.—The Central Valley Project Improvement Act (Public Law 102–575) is amended—

(1) in section 3407(c)(1) (106 Stat. 4726), by striking “3405(a)(1)(C)” and inserting “3405(a)(4)(C)”;

(2) in section 3408(i)(1) (106 Stat. 4729), by striking “3405(a)(1) (A) and (J) of this title” and inserting “subparagraphs (A) and (J) of section 3405(a)(4)”

**SEC. 311. WARREN ACT CONTRACTS.**

[To be supplied.]

Commented [A30]: SNAFU

**SEC. 312. ADDITIONAL WARREN ACT CONTRACTS.**

Commented [A31]: No go.

(a) IN GENERAL.—Not later than 30 days after the date of the enactment of this Act, the Secretary of the Interior shall develop and offer to the Calaveras County

Water District (hereafter in this section referred to as the “CCWD”) a contract enabling the CCWD to impound and store up to 100,000 acre-feet of their Stanislaus River water rights in the New Melones Reservoir in accordance with the terms and conditions of sections 1 through 3 of the Act of February 21, 1911 (43 U.S.C. 523–525; commonly known as the “Warren Act”). This stored water may be obtained for use by CCWD at a point, or points determined convenient to the District.

(b) TERMS AND CONDITIONS.—The terms and conditions of any contract entered into under subsection (a) shall—

(1) be for a term of not less than 20 years; and

(2) expressly provide that—

(A) the CCWD may use any water impounded and stored in the New Melones Reservoir for any legal purpose under California law, including use within the boundaries of the

CCWD, transfer to and reasonable and beneficial use by a person or entity not located with

in the boundaries of CCWD, and for instream use in the Stanislaus River, the San Joaquin

River, or the Sacramento-San Joaquin River



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Delta; and

(B) any water impounded and stored by the district shall not be released or withdrawn if the end of month September storage level for New Melones Reservoir is projected to be equal to or below 300,000 acre-feet, but in such event the impounded and stored water shall be retained in the New Melones Reservoir for use by the district in the following year, subject to the same 300,000 acre-foot minimum storage requirement, and without additional payment being required.

~~[To be supplied.]~~

## TITLE IV—INCREASING WATER STORAGE

### SEC. 401. FINDINGS.

Congress finds that—

(1) the record drought conditions being experienced in the State as of the date of enactment of this Act are—

(A) expected to recur in the future; and

(B) likely to do so with increasing frequency;

(2) water storage is an indispensable and integral part of any solution to address the long-term water challenges of the State;

(3) Congress authorized relevant feasibility studies for 4 water storage projects in the State, including projects for—

(A) enlargement of Shasta Dam in Shasta County under section 2(a) of Public Law 96–375 (94 Stat. 1506), as reaffirmed under section 103(d)(1)(A)(i)(I) of Public Law 108–361 (118 Stat. 1684);

(B) enlargement of Los Vaqueros Reservoir in Contra Costa County under section 215 of Public Law 108–7 (117 Stat. 147), as reaffirmed under section 103(d)(1)(A)(i)(II) of Public Law 108–361 (118 Stat. 1684);

(C) construction of North-of-Delta Offstream Storage (Sites Reservoir) in Colusa County under section 215 of Public Law 108–7 (117 Stat. 147), as reaffirmed under section 103(d)(1)(A)(ii)(I) of Public Law 108–361 (118 Stat. 1684); and

(D) construction of the Upper San Joaquin River storage (Temperance Flat) in Fresno and Madera Counties under section 215 of Public Law 108–7 (117 Stat. 147), as reaffirmed under section 103(d)(1)(A)(ii)(II) of Public Law 108–361 (118 Stat. 1684);

(4) (A) as of the date of enactment of this Act, it has been more than 10 years since the authorization of the feasibility studies referred to in paragraph (3); but

(B) complete and final feasibility studies have not been prepared for any of those water storage projects;

(5) as of August 2014, only 2 of the 4 projects referred to in paragraph (3) have completed draft feasibility studies;

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(6) the slow pace of work on completion of the feasibility studies for those 4 water storage projects is—

(A) unjustified; and

(B) of deep concern; and

(7) there is significant public interest in, and urgency with respect to, completing all feasibility studies and environmental reviews for the water storage projects referred to in paragraph (3), given the critical need for that infrastructure to address the water challenges of the State.

**SEC. 402. CALFED STORAGE FEASIBILITY STUDIES.**

(a) In General.—Notwithstanding subparagraph (B)(i) of section 103(d)(1) of Public Law 108–361 (118 Stat. 1684), the Secretary of the Interior, acting through the Commissioner of Reclamation (referred to in this title as the “Secretary”), shall complete a final feasibility study and any other applicable environmental review documents for the project described in—

(1) subparagraph (A)(i)(I) of that section by not later than December 31, 2014;

(2) subparagraph (A)(ii)(II) of that section by not later than July 31, 2015.

(b) Environmental Reviews.—In carrying out subsection (a), the Secretary—

(1) shall ensure that—

(A) all applicable reviews, including reviews required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), are completed as expeditiously as practicable; and

(B) the shortest applicable process under that Act is used, including in the completion of—

(i) feasibility studies;

(ii) draft environmental impact statements; and

(iii) final environmental impact statements; and

(2) shall not be required to complete a draft or final environmental impact statement if the Commissioner of Reclamation determines, and the Secretary concurs, that the project fails to meet applicable Federal cost-benefit requirements or standards.

(c) Accountability.—

(1) If the Bureau of Reclamation determines that an environmental review document for the water storage projects referenced in of Section 103(d)(1) of P.L. 108-361 will not be completed according to the schedule specified in subsection (a), the Bureau shall notify the Senate Committee on Energy and Natural Resources, the Senate Appropriations Subcommittee on Energy and Water Development, the House of Representatives Natural Resources Committee, and the House of Representatives Transportation and Infrastructure Committee within 14 days of the determination. The notification shall include:

(A) An explanation of the delay;

(B) The anticipated length of the delay and the revised completion date;

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(C) The steps that the Bureau will take to mitigate the delay, including, but not limited to, a request to reprogram existing funds appropriated to the Bureau to meet the revised completion deadline.

(2) The Bureau of Reclamation shall carry out the procedures in subsection (a) for each subsequent delay beyond the revised completion deadline.

(1) IN GENERAL.—[Subject to paragraph (2),] if the Secretary fails to complete a feasibility study or environmental review required for any water storage project referred to in subsection (a) in accordance with the schedule specified in that subsection, the amounts made available to the Policy and Administration Account of the Bureau of Reclamation for fiscal year 2015 shall be withheld and reduced by an amount equal to the product obtained by multiplying—

(A) \$20,000; and

(B) the number of weeks during the period beginning on the applicable deadline for completion of the feasibility study or environmental review and ending on the date on which the final feasibility study or environmental review is completed.

(2) DISTRIBUTION.—If the relevant feasibility study or environmental review is delayed beyond the schedule specified in subsection (a), the percentage of withheld funds that shall be released and made available to the Bureau of Reclamation on completion of the feasibility study or environmental review document shall be—

(A) in the case of a delay the duration of which is less than [or equal to] 90 days, 100 percent of the withheld funds;

(B) in the case of a delay the duration of which is more than 90 days but less than [or equal to] 180 days, 75 percent of the withheld funds;

(C) in the case of a delay the duration of which is more than 180 days but less than [or equal to] 270 days, 50 percent of the withheld funds;

(D) in the case of a delay the duration of which is more than 270 days but less than [or equal to] 1 year, 25 percent of the withheld funds; and

(E) in the case of a delay the duration of which is more than 1 year, 0 percent of the withheld funds.

**Commented [A32]:** We might as well add back in the penalties. Otherwise they'll just delay and delay.

## SEC. 403. WATER STORAGE PROJECT CONSTRUCTION.

(a) The Secretary, acting through the Commissioner of the Bureau of Reclamation, may partner or enter into an agreement on the water storage projects identified in section 103(d)(1) of the Water Supply Reliability and Environmental Improvement Act (Public Law 108-361) (and Acts supplemental and amendatory to the Act) with local joint powers authorities formed pursuant to State law by irrigation districts and other local water districts and local governments within the applicable hydrologic region, to advance those projects

(b) [PLACEHOLDER FOR AUTHORIZATION ISSUE]

**Commented [A33]:** This needs to be addressed in a wider conversation with the Senate. We need to find a way to strengthen the provision and address issues raised by PG&E.

**Commented [A34]:** As for financing – what if we allowed Treasury to invest money from the reclamation fund (similar to how SSA does it) and take that surplus money and put it into a “storage trust fund”?

**Commented [A35]:** Along with allowing early repayment, can the money that comes in after they have paid back the FED go toward said “storage trust fund” instead of back to Treasury?

**Commented [A36]:** Insert Doc's storage bill.

SEC. 404 . DAM SAFETY PROJECTS WITH INCREASED STORAGE COMPONENT.

(a) Additional Project Benefits.—The Reclamation Safety of Dams Act of 1978 is amended—

(1) in section 3 (43 U.S.C. 507), by striking “Construction” and inserting “Except as provided in section 5B, construction”; and

(2) by inserting after section 5A (43 U.S.C. 509a) the following:

“SEC. 5B. ADDITIONAL PROJECT BENEFITS.

“(a) In General.—Notwithstanding section 3, if the Secretary, in the judgment of the Secretary, makes a determination described in subsection (b), the Secretary is authorized to develop any additional project benefit—

“(1) through the construction of new or supplementary works on a project in conjunction with the activities carried out by the Secretary pursuant to section 2; and

“(2) subject to the conditions described in the feasibility study relating to the project.

“(b) Description of Determination.—A determination referred to in subsection (a) is a determination by the Secretary that—

“(1) an additional project benefit, including but not limited to additional conservation storage capacity, is—

“(A) necessary; and

“(B) in the interests of the United States; and

“(2) the project benefit proposed to be carried out is—

“(A) feasible; and

“(B) not inconsistent with the purposes of this Act.

“(c) Requirements.—The costs associated with developing an additional project benefit under this section shall be—

“(1) allocated to entity or entities benefitting from the additional conservation storage capacity, subject to agreement between the state and federal funding agencies on such allocations; and

“(2) repaid in accordance with all applicable provisions of Federal reclamation law (the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act (43 U.S.C. 371 et seq.).”.

(b) San Luis Reservoir Expansion.—Section 103(f)(1)(A) of Public Law 108–361 (118 Stat. 1694) is amended—

(1) by striking “Funds” and inserting the following:

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“(i) IN GENERAL.—Funds”; and  
(2) by adding at the end the following:

“(ii) ENVIRONMENTAL REVIEWS AND FEASIBILITY STUDY.—The Commissioner of Reclamation shall submit to Congress—

“(I) an expansion draft environmental impact statement and feasibility study relating to the San Luis Reservoir by not later than April 1, 2016; and

“(II) a final environmental impact statement relating to the San Luis Reservoir by not later than December 31, 2016.”.

~~SEC. 406. UPDATING WATER OPERATIONS MANUALS  
FOR NON FEDERAL PROJECTS.~~

(a) Cooperative Agreements.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, to determine the feasibility of an agreement for long-term use of an existing or expanded non-Federal storage or conveyance facility to augment Federal water supply, ecosystem, and operational flexibility benefits, the Secretary shall offer to enter into cooperative agreements with non-Federal entities to provide replacement water supplies for drought relief for—

(A) contractors of the Central Valley Project (as defined in section 3403 of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706));

(B) units of the National Wildlife Refuge System;

(C) State wildlife areas; and

(D) private wetland areas.

(2) REQUIREMENTS.—A cooperative agreement under this subsection shall—

(A) include the purchase of storage capacity in non-Federal facilities from willing sellers; and

(B) provide reimbursement for the temporary use of available capacity in existing above-ground, off-stream storage and associated conveyance facilities owned by local water agencies.

(b) Report.—Not later than 2 years after the date of enactment of this Act, the Secretary shall submit to the Chief of the National Wildlife Refuge System and contractors of the Central Valley Project a report describing the feasibility of the agreement for long-term use described in subsection (a)(1).

**Commented [A37]:** Kern thinks this language should stay in the bill based on DWR's view that it might be helpful to SWP. However, the editing program won't let me remove the strikethrough. The language should be retained in spite of the strikethrough.

**Commented [A38]:** Is it possible to require operations manuals at all federal facilities? Folsom doesn't really have one. Delete.

TITLE V—WATER RIGHTS PROTECTIONS

SEC. 501. PROTECTIONS FOR STATE WATER PROJECT CONTRACTORS.

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If, as a result of the application of this Act, the California Department of Fish and Wildlife:

(a) revokes the consistency determinations pursuant to California Fish and Game Code section 2080.1 that are applicable to the State Water Project;

(b) amends or issues one or more new consistency determinations pursuant to California Fish and Game Code section 2080.1 in a manner that results in reduced water supply to the State Water Project as compared with the water supply available under the Smelt Biological Opinion and the Salmonid Biological Opinion; or

~~(c)~~ (c) requires take authorization under section 2081 for operation of the State Water Project in a manner that results in reduced water supply to the State Water Project as compared with the water supply available under the Smelt Biological Opinion and the Salmonid Biological Opinion, and as a consequence, there is an increase in Central Valley Project yield, any such increase shall be shared equally with the State Water Project. Prior to implementing this Act, the Secretary shall request written notification from the California Department of Fish and Wildlife indicating whether implementation of this Act will affect the status of consistency determinations for operation of the State Water Project

~~(a)~~ The Secretary of the Interior (Secretary) is directed in the operation of the Central Valley Project (CVP) to adhere to California's water rights laws governing water rights priorities honoring water rights senior to those held by the United States for operation of the CVP regardless of the source of priority, including any appropriative water rights initiated prior to December 19, 1914, as well as water rights and other priorities perfected or to be perfected pursuant to California Water Code Part 2 of Division 2, Article 1.7 (commencing with section 1215 of Chapter 1 of Part 2 of Division 2, Sections 10505, 10505.5, 11128, 11460, 11461, 11462 and 11463, and Sections 12200 to 12220, inclusive).

(b) Any action that requires that diversions be bypassed or that involves the release of water from any CVP water storage facility taken by the Secretary or the Secretary of the Department of Commerce pursuant to Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531, et seq.) shall be applied in a manner that is consistent with water rights priorities established by California law.

(a) The Secretary shall ensure that, except as otherwise provided for in a water service or repayment contract, actions taken in compliance with legal obligations imposed pursuant to or as a result of this Act, including, but not limited to, such actions under the Endangered Species Act of 1973 (16 U.S.C. § 1531 et seq.) is amended and other federal laws, shall not result in the involuntary reduction of water supply to individuals or districts who receive water from the State Water Project or from the United States under water rights settlement contracts, exchange contracts, water service or repayment contracts, cause redirected adverse water supply or fiscal impacts to those within the Sacramento River Watershed or the State Water Project service area.

(b) To the extent that costs are incurred solely pursuant to or as a result of this Act and would not otherwise have been incurred by any entity or public or local agency or subdivision of the State of California, such costs shall not be borne by any such entity, agency, or subdivision of the State of California, unless such costs are incurred on a voluntary basis.

~~(c)~~ (c) Except as provided in this Act, nothing in this Act shall modify or amend the rights and obligations of the parties to any existing water service, repayment, settlement, purchase, or exchange contract with the United States, including the obligation to satisfy

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exchange contracts and settlement contracts prior to allocation of Central Valley Project  
yield

**SEC. 504. EFFECT ON STATE LAWS.**

Nothing in this Act preempts any State law in effect on the date of enactment of this Act,  
including area of origin and other water rights protections or modifies any existing obligation of  
the United States under Federal reclamation law to operate the Central Valley Project in  
conformity with State law including established water rights priorities.

**TITLE VI—MISCELLANEOUS**

**SEC. 601. AUTHORIZED SERVICE AREA.**

(a) In General.—The authorized service area of the Central Valley Project authorized under  
the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706) shall include  
the area within the boundaries of the Kettleman City Community Services District, California, as  
in existence on the date of enactment of this Act.

(b) Long-term Contract.—

(1) IN GENERAL.—Notwithstanding the Central Valley Project Improvement Act (Public  
Law 102–575; 106 Stat. 4706) and subject to paragraph (2), the Secretary of the Interior, in  
accordance with the reclamation laws, shall enter into a long-term contract with the  
Kettleman City Community Services District, California, under terms and conditions  
mutually agreeable to the parties, for the delivery of up to 900 acre-feet of Central Valley  
Project water for municipal and industrial use.

(2) LIMITATION.—Central Valley Project water deliveries authorized under the contract  
entered into under paragraph (1) shall be limited to the minimal quantity necessary to meet  
the immediate needs of the Kettleman City Community Services District, California, in the  
event that local supplies or State Water Project allocations are insufficient to meet those  
needs.

(c) Permit.—The Secretary shall apply for a permit with the State for a joint place of use for  
water deliveries authorized under the contract entered into under subsection (b) with respect to  
the expanded service area under subsection (a), consistent with State law.

(d) Additional Costs.—If any additional infrastructure, water treatment, or related costs are  
needed to implement this section, those costs shall be the responsibility of the non-Federal entity.

**~~SEC. 602. RESCHEDULED WATER.~~**

(a) Report; Advisory Board.—Section 3407 of the Central Valley Project Improvement Act  
(Public Law 102–575; 106 Stat. 4726) is amended by adding at the end the following:

“(g) Report on Expenditure of Funds.—

“(1) IN GENERAL.—For each fiscal year, the Secretary, in consultation with the Advisory  
Board, shall submit to Congress a plan for the expenditure of all of the funds deposited into

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the Restoration Fund during the preceding fiscal year.

“(2) CONTENTS.—The plan shall include an analysis of the cost-effectiveness of each expenditure.

“(h) Advisory Board.—

“(1) ESTABLISHMENT.—There is established the Restoration Fund Advisory Board (referred to in this section as the ‘Advisory Board’), which shall be composed of 154 members appointed by the Secretary.

“(2) MEMBERSHIP.—

“(A) IN GENERAL.—The Secretary shall appoint members to the Advisory Board that represent the various Central Valley Project stakeholders, of whom—

“(i) 3 members shall be agricultural users of the Central Valley Project;

“(ii) 2 members shall be municipal and industrial users of the Central Valley Project;

“(iii) 3 members shall be power contractors of the Central Valley Project;

“(iv) 1 member shall be a representative of a federal wildlife refuge that contracts for Central Valley Project water supplies with the Bureau of Reclamation;

“(v) 1 member shall represent nongovernmental organizations involved in the protection and restoration of California fisheries;

“(vi) 1 member shall represent the commercial fishing industry;

“(vii) 1 member shall represent the recreational fishing industry; and

“(viii) 2 members shall be appointed at the discretion of the Secretary.

“(ix) 1 member shall be an economist

“(B) OBSERVER.—The Secretary and the Secretary of Commerce may each designate a representative to act as an observer of the Advisory Board.

“(C) CHAIRMAN.—The Secretary shall appoint 1 of the members described in subparagraph (A) to serve as Chairman of the Advisory Board.

“(3) TERMS.—The term of each member of the Advisory Board shall be 4 years.

“(4) DATE OF APPOINTMENTS.—The appointment of a member of the Panel shall be made not later than—

(A) the date that is 120 days after the date of enactment of this Act; or

(B) in the case of a vacancy on the Panel described in subsection (c)(2), the date that is 120 days after the date on which the vacancy occurs.

“(5) Vacancies.—

(A) IN GENERAL.—A vacancy on the Panel shall be filled in the manner in which the original appointment was made and shall be subject to any conditions that applied with respect to the original appointment.



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(B) FILLING UNEXPIRED TERM.—An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

(C) EXPIRATION OF TERMS.—The term of any member shall not expire before the date on which the successor of the member takes office.

“(6) Removal —A Member of the Panel may be removed from office by the Secretary of the Interior.

“(7) Federal Advisory Committee Act. —The Panel shall not be subject to the requirements of the Federal Advisory Committee Act.

“(8) DUTIES.—The duties of the Advisory Board are—

“(A) to meet not less frequently than semiannually to develop and make recommendations to the Secretary regarding priorities and spending levels on projects and programs carried out under this title;

“(B) to ensure that any advice given or recommendation made by the Advisory Board reflects the independent judgment of the Advisory Board;

“(C) not later than December 31, 2015, and annually thereafter, to submit to the Secretary and Congress the recommendations under subparagraph (A); and

“(D) not later than December 31, 2015, and biennially thereafter, to submit to Congress a report that details the progress made in achieving the actions required under section 3406.

“(9) ADMINISTRATION.—With the consent of the appropriate agency head, the Advisory Board may use the facilities and services of any Federal agency.”

“(10) Cooperation and Assistance.—

(A) Upon request of the Panel Chairperson for information or assistance to facilitate the carrying out of this section, the Secretary of the Interior shall promptly provide such information, unless otherwise prohibited by law.

(B) Space and Assistance.—The Secretary of the Interior shall provide the Panel with appropriate and adequate office space, together with such equipment, office supplies, and communications facilities and services as may be necessary for the operation of the Panel, and shall provide necessary maintenance services for such offices and the equipment and facilities located therein.

**SEC. 603. WATER OPERATIONS REVIEW PANEL.**

Commented [A43]: Delete

(a) Establishment.—There is established a panel to be known as the “Water Operations Review Panel”.

(b) Membership.—

(1) COMPOSITION.—The Panel shall be composed of **5** members **with demonstrated expert knowledge of the Central Valley Project and State Water Project and their respective operations**, appointed by the Secretary of the Interior, in consultation with the Secretary of Commerce **and the congressional committees identified in (C)(1)(A) of this section** of whom—

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(A) 1 member shall be a person who possesses expert knowledge of methods generally accepted by the scientific community, who shall be the Chairperson of the Panel;

(B) 2 members shall be fisheries biologists, of whom—

(i) 1 member shall have expertise in Delta smelt; and

(ii) 1 member shall have expertise in salmonids; and

~~(C)~~ ~~(C)~~ 2 members shall be engineers with substantial expertise in Central Valley Project and State Water Project water operations.

~~(C)~~ ~~(D)~~ 1 member shall be an economist 1 member shall have expertise in the economic impacts of changes to water operations.

~~(2) RECOMMENDATIONS.—The Secretary of the Interior shall consider the recommendation.~~

~~(3) PROHIBITION ON FEDERAL OR STATE GOVERNMENT EMPLOYMENT.—For at least three years prior to appointment to the Panel, an individual appointed to the Panel under paragraph (1) shall not have been an employee of the Federal Government or the State of California.~~

~~(4) DATE OF APPOINTMENTS.—The appointment of a member of the Panel shall be made not later than—~~

(A) the date that is 120 days after the date of enactment of this Act; or

(B) in the case of a vacancy on the Panel described in subsection (c)(2), the date that is 120 days after the date on which the vacancy occurs.

(c) Term; Vacancies.—

(1) TERMS.—A member of the Panel shall be appointed for a term of 3 years, except that, with respect to the members first appointed under this section—

(A) the Chairperson shall be appointed for a term of 3 years;

(B) of the members appointed under subsection (b)(1)(B)—

(i) 1 member shall be appointed for a term of 1 year; and

(iii) 1 member shall be appointed for a term of 2 years;

(C) of the members appointed under subsection (b)(1)(C)—

(i) 1 member shall be appointed for a term of 1 year; and

(ii) 1 member shall be appointed for a term of 2 years.

(2) VACANCIES.—

(A) IN GENERAL.—A vacancy on the Panel shall be filled in the manner in which the original appointment was made and shall be subject to any conditions that applied with respect to the original appointment.

(B) FILLING UNEXPIRED TERM.—An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

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(d) Removal. —A Member of the Panel may be removed from office by the Secretary of the Interior.

(e) Federal Advisory Committee Act. —The Panel shall not be subject to the requirements of the Federal Advisory Committee Act.

(f) Duties.

(1) Annual Assessment and Report on Agencies' Operational Decisions under this Act.—

(A) IN GENERAL.—No later than November 30, 2015, and annually no later than November 30 thereafter, the Panel shall report an assessment of the agencies' operational decisions under this Act and recommendations for the prospective implementation of this Act to the following Congressional committees:

(i) Senate Committee on Environment and Public Works;

(ii) Senate Appropriations Subcommittee on Energy and Water Development;

(iii) House Natural Resources Committee; and

(iv) House Appropriations Subcommittee on Energy and Water Development.

(B) RETROSPECTIVE ASSESSMENT.—In making the retrospective assessment under paragraph (1), the Panel shall review and evaluate ~~restrictions imposed under the smelt biological opinion and the salmonid biological opinion, and successor opinions, on operations of the Central Valley Project and State Water Project, the Director of the Fish and Wildlife Service, Administrator of NOAA Fisheries, and Commissioner of Reclamation;~~

(i) ~~to determine the efficacy of those restrictions for the purpose of protecting listed species; and decisions in implementing this Act and other Federal laws applicable to the operations of the Central Valley Project and the State Water Project;~~

(ii) ~~compliance with the Endangered Species Act in relation to operations of the Central Valley Project and the State Water Project; and~~

(C) PROSPECTIVE RECOMMENDATIONS.—The Panel shall make recommendations for prospective actions and potential actions warranting further study to better achieve the purposes of this Act and the Endangered Species Act as applied to the operations of the Central Valley Project and the State Water Project, including proposals—

(i) that in combination, both increase the survival of listed species and increase water supplies for the Central Valley Project and the State Water Project;

(ii) ~~to increase the survival of listed fish species with little to no adverse effects on water supplies for the Central Valley Project and the State Water Project that would result from taking the specific proposed action recommended;~~

~~and~~ to increase such water supplies with little to no adverse effects on the survival of listed fish species; and

~~(iii)~~ that respond to the annual Delta Science Program Independent Review Panel reports on the Long-term Operations Opinions.

~~(2) Five-Year Assessment on Effectiveness of Provisions of Act and Recommended~~

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**Legislative Changes:**

(g) Cooperation and Assistance.—

(1) Upon request of the Panel Chairperson for information or assistance to facilitate the carrying out of this section, the Secretary of Commerce and the Secretary of the Interior shall promptly provide such information, unless otherwise prohibited by law.

(2) Space and Assistance.—The Secretary of the Interior shall provide the Panel with appropriate and adequate office space, together with such equipment, office supplies, and communications facilities and services as may be necessary for the operation of the Panel, and shall provide necessary maintenance services for such offices and the equipment and facilities located therein.

**SEC. 6067056. CONTINGENCY IN EVENT OF  
CONTINUING RESOLUTION FOR FISCAL YEAR 2015.**

**Sec. 604. WATER SUPPLY ACCOUNTING**

All Central Valley Project water, except Central Valley Project water released from the Friant Division pursuant to the San Joaquin River Restoration Settlement Act (Public Law 111-11) and water released pursuant to the December 2000 Trinity River Mainstem Fishery Restoration Record of Decision, used to implement an action undertaken for a fishery beneficial purpose that was not imposed by terms and conditions existing in licenses, permits, and other agreements pertaining to the Central Valley Project under applicable State or Federal law existing on October 30, 1992, shall be credited to the quantity of Central Valley Project yield dedicated and managed under this section, provided, that nothing herein shall affect the Secretary's duty to comply with any otherwise lawful requirement imposed on operations of the Central Valley Project under any provision of federal or state law.

**Sec. 605. IMPLEMENTATION OF WATER REPLACEMENT PLAN**

Not later than October 1, 2015, the Secretary shall update and implement the plan required by Section 3408(j) of Title 34 of Public Law 102-575. In carrying out this subsection, the Secretary shall, in accordance with any other provision of Federal reclamation law, the National Environmental Policy Act of 1969, and the 1986 Coordinated Operating Agreement (Public Law 99-546), coordinate with the State of California to minimize any adverse effects. The Secretary shall provide reports to the Congress annually describing the progress of implementing the plan required by Section 3408(j) of Title 34 of Public Law 102-575.

**Sec. 606. RESTORATION FUND.**

Water service and repayment contractors that receive water from the Delta Division or the San Luis Unit of the Central Valley Project shall be assessed, in addition to all other payments

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collected pursuant to section 3407 of the Central Valley Project Improvement Act (Public Law 102-575; 106 Stat. 4 ), a per acre-foot surcharge, equal to 50% of the annual Restoration fund payments, for all Project water delivered during any year in which the allocation to such contractors is 50% to 74% and a per acre-foot surcharge, equal to 100% of the annual Restoration fund payments, delivered during any year in which the allocation to such contractors is 75% or greater, to be covered into the Restoration Fund.

**Commented [A44]:** We should debate this issue and determine its effectiveness in delivering more water.

**Sec. 607. NATURAL AND ARTIFICIALLY SPAWNED SPECIES.**

After the date of the enactment of this title, and regardless of the date of listing, the Secretaries of the Interior and Commerce shall not distinguish between natural-spawned and hatchery-spawned or otherwise artificially propagated strains of a species in making any determination under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) that relates to any anadromous fish species present in the Sacramento and San Joaquin Rivers or their tributaries and ascend those rivers and their tributaries to reproduce after spawning in San Francisco Bay or the Pacific Ocean.

**Sec. 608. AMENDMENT TO PURPOSES**

Section 3402 of the Central Valley Project Improvement Act (106 Stat. 4706) is amended—

(1) in subsection (f), by striking the period at the end; and

(2) by adding at the end the following:

“(g) to ensure that water dedicated to fish and wildlife purposes by this title is replaced and provided to Central Valley Project water contractors by December 31, 2018, at the lowest cost reasonably achievable; and

“(h) to facilitate and expedite water transfers in accordance with this Act.”

**Sec. 609. AMENDMENT TO DEFINITION**

Section 3403 of the Central Valley Project Improvement Act (106 Stat. 4707) is amended—

(1) by amending subsection (a) to read as follows:

“(a) the term ‘anadromous fish’ means those native stocks of salmon (including steelhead) and sturgeon that, as of October 30, 1992, were present in the Sacramento and San Joaquin Rivers and their tributaries and ascend those rivers

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and their tributaries to reproduce after maturing in San Francisco Bay or the Pacific Ocean.”

(2) in subsection (f), by striking “and.”

(3) in subsection (m), by striking the period and inserting “; and” and

(4) by adding at the end the following:

“(n) the term ‘reasonable flows’ means water flows capable of being maintained taking into account competing consumptive uses of water and economic, environmental, and social factors.”

## **TITLE VII. WESTERN WATER.**

### **Sec. 701. Repayment Contracts Language.**

### **Sec. 702. WRDA Language**

### **Sec. 703. MAP-21 Language**

#### **(a) ESTABLISHMENT.—**

(1) IN GENERAL.—The Secretary shall carry out a water infrastructure project delivery program (referred to in this section as the “program”).

#### **(2) ASSUMPTION OF RESPONSIBILITY.—**

(A) IN GENERAL.—Subject to the other provisions of this section, with the written agreement of the Secretary and a State, which may be in the form of a memorandum of understanding, the Secretary may assign, and the State may assume, the responsibilities of the Secretary with respect to one or more eligible water infrastructure projects described in subparagraph (B) within the State under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(B) ELIGIBLE WATER INFRASTRUCTURE PROJECTS.—In this section the term “eligible water infrastructure projects” means projects for which a non-Federal entity has lead responsibility for approving the overall project, including projects for which federal agency permitting is required or some federal funding is provided.

(C) ADDITIONAL RESPONSIBILITY.—If a State assumes responsibility under subparagraph (A)—

(i) the Secretary may assign to the State, and the State may assume, all or part of the responsibilities of the Secretary for environmental review,

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consultation, or other action required under any Federal environmental law pertaining to the review or approval of a specific project; but (ii) at the request of the State, the Secretary may also assign to the State, and the State may assume, the responsibilities of the Secretary with respect to 1 or more eligible water infrastructure projects within the State under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(D) PROCEDURAL AND SUBSTANTIVE REQUIREMENTS.—A State shall assume responsibility under this section subject to the same procedural and substantive requirements as would apply if that responsibility were carried out by the Secretary.

(E) FEDERAL RESPONSIBILITY.—Any responsibility of the Secretary not explicitly assumed by the State by written agreement under this section shall remain the responsibility of the Secretary.

(F) NO EFFECT ON AUTHORITY.—Nothing in this section preempts or interferes with any power, jurisdiction, responsibility, or authority of an agency, other than the Department of the Interior, under applicable law (including regulations) with respect to a project.

(G) PRESERVATION OF FLEXIBILITY.—The Secretary may not require a State, as a condition of participation in the program, to forego project delivery methods that are otherwise permissible for projects.

(b) STATE PARTICIPATION.—

(1) PARTICIPATING STATES. — California is eligible to participate in the program.

(2) APPLICATION.—Not later than 270 days after the date of enactment, the Secretary shall amend, as appropriate, regulations that establish requirements relating to information required to be contained in an application of a State to participate in the program, including, at a minimum—

(A) the projects or classes of projects for which the State anticipates exercising the authority that may be granted under the program;

(B) verification of the financial resources necessary to carry out the authority that may be granted under the program; and

(C) evidence of the notice and solicitation of public comment by the State relating to participation of the State in the program, including copies of comments received from that solicitation.

(3) PUBLIC NOTICE.—

(A) IN GENERAL.—The State that submits an application under this subsection shall give notice of the intent of the State to participate in the program not later than 30 days before the date of submission of the application.

(B) METHOD OF NOTICE AND SOLICITATION.—The State shall provide notice and solicit public comment under this paragraph by publishing the complete application of the State in accordance with the appropriate public notice law of the state.

(4) SELECTION CRITERIA.—The Secretary may approve the application of a State under this section only if—

(A) the regulatory requirements under paragraph (2) have been met;

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(B) the Secretary determines that the State has the capability, including financial and personnel, to assume the responsibility; and

(C) the head of the State agency having primary jurisdiction over water infrastructure matters enters into a written agreement with the Secretary described in subsection (c).

(5) OTHER FEDERAL AGENCY VIEWS.—If a State applies to assume a responsibility of the Secretary that would have required the Secretary to consult with another Federal agency, the Secretary shall solicit the views of the Federal agency before approving the application.

(c) WRITTEN AGREEMENT.—A written agreement under this section shall—

(1) be executed by the Governor or the top ranking water infrastructure official in the State who is charged with responsibility for water infrastructure construction;

(2) be in such form as the Secretary may prescribe;

(3) provide that the State—

(A) agrees to assume all or part of the responsibilities of the Secretary described in subsection (a);

(B) expressly consents, on behalf of the State, to accept the jurisdiction of the Federal courts for the compliance, discharge, and enforcement of any responsibility of the Secretary assumed by the State;

(C) certifies that State laws (including regulations) are in effect that authorize the State to take the actions necessary to carry out the responsibilities being assumed; and

(D) agrees to maintain the financial resources necessary to carry out the responsibilities being assumed;

(4) require the State to provide to the Secretary any information that the Secretary considers necessary to ensure that the State is adequately carrying out the responsibilities assigned to the State;

(5) have a term of not more than 5 years; and

(6) be renewable.

(d) JURISDICTION.—

(1) IN GENERAL.—The United States district courts shall have exclusive jurisdiction over any civil action against a State for failure to carry out any responsibility of the State under this section.

(2) LEGAL STANDARDS AND REQUIREMENTS.—A civil action under paragraph (1) shall be governed by the legal standards and requirements that would apply in such a civil action against the Secretary had the Secretary taken the actions in question.

(3) INTERVENTION.—The Secretary shall have the right to intervene in any action described in paragraph (1).

(e) EFFECT OF ASSUMPTION OF RESPONSIBILITY.—A State that assumes responsibility under subsection (a)(2) shall be solely responsible and solely liable for carrying out, in lieu of the Secretary, the responsibilities assumed under subsection (a)(2), until the program is terminated as provided in subsection (j).

(f) LIMITATIONS ON AGREEMENTS.—Nothing in this section permits a State to assume any rulemaking authority of the Secretary under any Federal law.

(g) AUDITS.—



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(1) IN GENERAL.—To ensure compliance by a State with any agreement of the State under subsection (c) (including compliance by the State with all Federal laws for which responsibility is assumed under subsection (a)(2)), for each State participating in the program under this section, the Secretary shall conduct—

(A) semiannual audits during each of the first 2 years of State participation; and

(B) annual audits during of the third and fourth years of State participation.

(2) PUBLIC AVAILABILITY AND COMMENT.—

(A) IN GENERAL.—An audit conducted under paragraph (1) shall be provided to the public for comment.

(B) RESPONSE.—Not later than 60 days after the date on which the period for public comment ends, the Secretary shall respond to public comments received under subparagraph (A).

(h) MONITORING. — After the fourth year of the participation of a State in the program, the Secretary shall monitor compliance by the State with the written agreement, including the provision by the State of financial resources to carry out the written agreement.

(i) TERMINATION. —

(1) TERMINATION BY SECRETARY.—The Secretary may terminate the participation of any State in the program if—

(A) the Secretary determines that the State is not adequately carrying out the responsibilities assigned to the State;

(B) the Secretary provides to the State—

(i) notification of the determination of noncompliance; and

(ii) a period of at least 30 days during which to take such corrective action as the Secretary determines is necessary to comply with the applicable agreement; and

(C) the State, after the notification and period provided under subparagraph (B), fails to take satisfactory corrective action, as determined by Secretary.

(2) TERMINATION BY THE STATE. — The State may terminate the participation of the State in the program at any time by providing to the Secretary a notice by not later than the date that is 90 days before the date of termination, and subject to such terms and conditions as the Secretary may provide.

Sec. 704. OTHER STORAGE FEASIBILITY STUDIES.

**SEC. xx. DEFINITIONS.**

In this Act:

(1) SECRETARY- The term 'Secretary' means the Secretary of the Interior.

(2) BUREAU- The term 'Bureau' means the Bureau of Reclamation.

(3) QUALIFYING PROJECTS- The term 'qualifying projects' means new surface water storage projects constructed on lands administered by the Department of the Interior or the Department of Agriculture, exclusive of any easement, right-of-way, lease, or any private holding.

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(4) COOPERATING AGENCIES- The term `cooperating agency' means a Federal agency with jurisdiction over a review, analysis, opinion, statement, permit, license, or other approval or decision required for a qualifying project under applicable Federal laws and regulations, or a State agency subject to section 3(c).

**SEC. xx. ESTABLISHMENT OF LEAD AGENCY AND COOPERATING AGENCIES.**

(a) Establishment of Lead Agency- The Bureau of Reclamation is established as the lead agency for purposes of coordinating all reviews, analyses, opinions, statements, permits, licenses, or other approvals or decisions required under Federal law to construct qualifying projects.

(b) Identification and Establishment of Cooperating Agencies- The Commissioner of the Bureau shall--

(1) identify, as early as practicable upon receipt of an application for a qualifying project, any Federal agency that may have jurisdiction over a review, analysis, opinion, statement, permit, license, approval, or decision required for a qualifying project under applicable Federal laws and regulations; and

(2) notify any such agency, within a reasonable timeframe, that the agency has been designated as a cooperating agency in regards to the qualifying project unless that agency responds to the Bureau in writing, within a timeframe set forth by the Bureau, notifying the Bureau that the agency--

(A) has no jurisdiction or authority with respect to the qualifying project;

(B) has no expertise or information relevant to the qualifying project or any review, analysis, opinion, statement, permit, license, or other approval or decision associated therewith; or

(C) does not intend to submit comments on the qualifying project or conduct any review of such a project or make any decision with respect to such project in a manner other than in cooperation with the Bureau.

(c) State Authority- A State in which a qualifying project is being considered may choose, consistent with State law--

(1) to participate as a cooperating agency; and

(2) to make subject to the processes of this Act all State agencies that--

(A) have jurisdiction over the qualifying project;

(B) are required to conduct or issue a review, analysis, or opinion for the qualifying project; or

(C) are required to make a determination on issuing a permit, license, or approval for the water resource project.

**SEC. xx. BUREAU RESPONSIBILITIES.**

(a) In General- The principal responsibilities of the Bureau under this Act are to--

(1) serve as the point of contact for applicants, State agencies, Indian tribes, and others regarding proposed projects;

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- (2) coordinate preparation of unified environmental documentation that will serve as the basis for all Federal decisions necessary to authorize the use of Federal lands for qualifying projects; and
- (3) coordinate all Federal agency reviews necessary for project development and construction of qualifying projects.

(b) Coordination Process- The Bureau shall have the following coordination responsibilities:

(1) PRE-APPLICATION COORDINATION- Notify cooperating agencies of proposed qualifying projects not later than 30 days after receipt of a proposal and facilitate a preapplication meeting for prospective applicants, relevant Federal and State agencies, and Indian tribes to--

(A) explain applicable processes, data requirements, and applicant submissions necessary to complete the required Federal agency reviews within the time frame established; and

(B) establish the schedule for the qualifying project.

(2) CONSULTATION WITH COOPERATING AGENCIES- Consult with the cooperating agencies throughout the Federal agency review process, identify and obtain relevant data in a timely manner, and set necessary deadlines for cooperating agencies.

(3) SCHEDULE- Work with the qualifying project applicant and cooperating agencies to establish a project schedule. In establishing the schedule, the Bureau shall consider, among other factors--

(A) the responsibilities of cooperating agencies under applicable laws and regulations;

(B) the resources available to the cooperating agencies and the non-Federal qualifying project sponsor, as applicable;

(C) the overall size and complexity of the qualifying project;

(D) the overall schedule for and cost of the qualifying project; and

(E) the sensitivity of the natural and historic resources that may be affected by the qualifying project.

(4) ENVIRONMENTAL COMPLIANCE- Prepare a unified environmental review document for each qualifying project application, incorporating a single environmental record on which all cooperating agencies with authority to issue approvals for a given qualifying project shall base project approval decisions. Help ensure that cooperating agencies make necessary decisions, within their respective authorities, regarding Federal approvals in accordance with the following timelines:

(A) Not later than one year after acceptance of a completed project application when an environmental assessment and finding of no significant impact is determined to be the appropriate level of review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(B) Not later than one year and 30 days after the close of the public comment period for a draft environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), when an environmental impact statement is required under the same.

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(5) CONSOLIDATED ADMINISTRATIVE RECORD- Maintain a consolidated administrative record of the information assembled and used by the cooperating agencies as the basis for agency decisions.

(6) PROJECT DATA RECORDS- To the extent practicable and consistent with Federal law, ensure that all project data is submitted and maintained in generally accessible electronic format, compile, and where authorized under existing law, make available such project data to cooperating agencies, the qualifying project applicant, and to the public.

(7) PROJECT MANAGER- Appoint a project manager for each qualifying project. The project manager shall have authority to oversee the project and to facilitate the issuance of the relevant final authorizing documents, and shall be responsible for ensuring fulfillment of all Bureau responsibilities set forth in this section and all cooperating agency responsibilities under section 5.

**SEC. xx. COOPERATING AGENCY RESPONSIBILITIES.**

(a) Adherence to Bureau Schedule- Upon notification of an application for a qualifying project, all cooperating agencies shall submit to the Bureau a timeframe under which the cooperating agency reasonably considers it will be able to complete its authorizing responsibilities. The Bureau shall use the timeframe submitted under this subsection to establish the project schedule under section 4, and the cooperating agencies shall adhere to the project schedule established by the Bureau.

(b) Environmental Record- Cooperating agencies shall submit to the Bureau all environmental review material produced or compiled in the course of carrying out activities required under Federal law consistent with the project schedule established by the Bureau.

(c) Data Submission- To the extent practicable and consistent with Federal law, the cooperating agencies shall submit all relevant project data to the Bureau in a generally accessible electronic format subject to the project schedule set forth by the Bureau.

**SEC. xx. FUNDING TO PROCESS PERMITS.**

(a) In General- The Secretary, after public notice in accordance with the Administrative Procedures Act (5 U.S.C. 553), may accept and expend funds contributed by a non-Federal public entity to expedite the evaluation of a permit of that entity related to a qualifying project or activity for a public purpose under the jurisdiction of the Department of the Interior.

(b) Effect on Permitting-

(1) IN GENERAL- In carrying out this section, the Secretary shall ensure that the use of funds accepted under subsection (a) will not impact impartial decisionmaking with respect to permits, either substantively or procedurally.

(2) EVALUATION OF PERMITS- In carrying out this section, the Secretary shall ensure that the evaluation of permits carried out using funds accepted under this section shall--

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(A) be reviewed by the Regional Director of the Bureau of Reclamation, or the Regional Director's designee, of the region in which the qualifying project or activity is located; and

(B) use the same procedures for decisions that would otherwise be required for the evaluation of permits for similar projects or activities not carried out using funds authorized under this section.

(3) IMPARTIAL DECISIONMAKING- In carrying out this section, the Secretary and the cooperating agencies receiving funds under this section for qualifying projects shall ensure that the use of the funds accepted under this section for such projects shall not--

(A) impact impartial decisionmaking with respect to the issuance of permits, either substantively or procedurally; or

(B) diminish, modify, or otherwise affect the statutory or regulatory authorities of such agencies.

(c) Limitation on Use of Funds- None of the funds accepted under this section shall be used to carry out a review of the evaluation of permits required under subsection (b)(2)(A).

(d) Public Availability- The Secretary shall ensure that all final permit decisions carried out using funds authorized under this section are made available to the public, including on the Internet.

**Commented [A45]:** I just replaced their language with the language from our One stop shop dam permitting bill.

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Title: To provide drought relief in the State of California, and for other purposes.

Valadao; Nunes; Denham; McCarthy; McClintock;

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) Short Title.—This Act may be cited as the “California Drought Relief Act of 2014”.

(b) Table of Contents.—The table of contents of this Act is as follows:

Sec.1.Short title; table of contents.

Sec.2.Findings.

Sec.3.Definitions.

**TITLE I—ADJUSTING DELTA SMELT MANAGEMENT  
BASED ON INCREASED REAL-TIME MONITORING AND  
UPDATED SCIENCE**

Sec.101.Definitions.

Sec.102.Revise incidental take level calculation to reflect new science.

Sec.103.Factoring increased real-time monitoring and updated science into ~~delta~~-Delta smelt management.

**TITLE II—ENSURING SALMONID MANAGEMENT IS  
RESPONSIVE TO NEW SCIENCE**

Sec.201.Definitions.

Sec.202.Required scientific studies.

Sec.203.Process for ensuring salmonid management is responsive to new science.

Sec.204.Pilot program to protect native anadromous fish in the Stanislaus River.

Sec.205.CALFED invasive species pilot projects in the Sacramento-San Joaquin Bay Delta and its tributaries.

Sec.206.Mark fishery and harvest management.

Sec.207.New actions to benefit Central Valley salmonids.

**TITLE III—OPERATIONAL FLEXIBILITY AND DROUGHT  
RELIEF**

Sec.301.Findings.

Sec.302.Definitions.

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- 1 Sec.303.Operational flexibility in times of drought.  
2 Sec.304.Operation of cross-channel gates.  
3 Sec.305.Flexibility for export/inflow ratio.  
4 Sec.306.Emergency environmental reviews.  
5 Sec.307.Prioritizing State revolving funds during droughts.  
6 Sec.308.Increased flexibility for regular project operations.  
7 Sec.309.Temporary operational flexibility for first few storms of 2015 water year.  
8 Sec.310.Expediting water transfers.  
9 Sec.311.Warren Act contracts. [PLACEHOLDER]  
10 Sec.312.Additional Warren Act contracts. [PLACEHOLDER]

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Commented [A2]: Major issues on the Stan River and New Melones Ops. Nothing to submit for Sec. 311 and the downstream districts are no ok with a provision for upstream users at this time.

**TITLE IV—INCREASING WATER STORAGE**

- 12 Sec.401.Findings.  
13 Sec.402.Calfed storage feasibility studies.  
14 Sec.403.Water storage project construction.  
15 Sec.404.Other storage feasibility studies.  
16 Sec.405.Dam safety projects with increased storage component.  
17 Sec.406.Updating water operations manuals for non-Federal projects.  
18 Sec.407.Central Valley Project.

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**TITLE V—WATER RIGHTS PROTECTIONS**

- 20 Sec.501.Protections for State water project contractors.  
21 Sec.502.Area of origin protections.  
22 Sec.503.No redirected adverse impacts.  
23 Sec.504.Effect on State laws.

**TITLE VI—MISCELLANEOUS**

- 25 Sec.601.Authorized service area.  
26 Sec.602.Rescheduled water.  
27 Sec.603.Fisheries disaster declaration. [PLACEHOLDER]  
28 Sec.604.Oversight board for Restoration Fund.  
29 Sec.605.Water operations review panel.  
30 Sec.606.Contingency in event of continuing resolution for fiscal year 2015.

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1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) As established in the Proclamation of a State of Emergency issued by the Governor of  
4 the State on January 17, 2014, the State is experiencing record dry conditions;

5 (2) Extremely dry conditions have persisted in the State since 2012, and the drought  
6 conditions are likely to persist into the future;

7 (3) As of September 2014, the National Weather Service’s forecast does not show a high  
8 likelihood of the State experiencing above-normal precipitation for the remainder of the  
9 calendar year;

10 (4) The water supplies of the State are at record-low levels, as indicated by the fact that  
11 all major Central Valley Project reservoir levels were at 20-35 percent of capacity as of  
12 September 25, 2014;

13 (5) The lack of precipitation has been a significant contributing factor to the 6,091 fires  
14 experienced in the State as of September 15, 2014, and which covered nearly 400,000 acres;

15 (6) According to a study released by the University of California, Davis in July 2014, the  
16 drought has led to the fallowing of 428,000 acres of farmland, loss of \$810 million in crop  
17 revenue, loss of \$203 million in dairy and other livestock value, and increased groundwater  
18 pumping costs by \$454 million. The statewide economic costs are estimated to be \$2.2  
19 billion, with over 17,000 seasonal and part-time agricultural jobs lost;

20 (7) CVPIA Level II water deliveries to refuges have also been reduced by 25% in the  
21 north of Delta region, and by 35% in the south of Delta region;

22 (8) Only one-sixth of the usual acres of rice fields are being flooded this fall, which leads  
23 to a significant decline in habitat for migratory birds and an increased risk of disease at the  
24 remaining wetlands due to overcrowding of such birds;

25 (9) The drought of 2013 through 2014 constitutes a serious emergency that poses  
26 immediate and severe risks to human life and safety and to the environment throughout the  
27 State;

28 (10) The serious emergency described in paragraph (4) requires—

29 (A) immediate and credible action that respects the complexity of the water system  
30 of the State and the importance of the water system to the entire State; and

31 (B) policies that do not pit stakeholders against one another, which history shows  
32 only leads to costly litigation that benefits no one and prevents any real solutions;

33 (11) Federal law (including regulations) directly authorizes expedited decisionmaking  
34 procedures and environmental and public review procedures to enable timely and  
35 appropriate implementation of actions to respond to the type and severity of the serious  
36 emergency described in paragraph (4); and

37 (12) The serious emergency described in paragraph (4) fully satisfies the conditions  
38 necessary for the exercise of emergency decisionmaking, analytical, and public review  
39 requirements under—



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(A) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(B) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(C) water control management procedures of the Corps of Engineers described in section 222.5 of title 33, Code of Federal Regulations (including successor regulations); and

(D) the Reclamation States Emergency Drought Relief Act of 1991 (Public Law 102–250; 106 Stat. 53).

(13) The ~~2008~~ smelt biological opinion and ~~2009~~ salmonid biological opinion contain reasonable and prudent alternatives ~~intended to avoid the likelihood of jeopardy for listed species or resulting in the destruction or adverse modification of critical habitat of listed species~~ protect listed fish species from being jeopardized by operation of the Central Valley Project and State Water Project and to prevent adverse modification of designated critical habitat;

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(14) The effect of those reasonable and prudent alternatives in the biological opinions may restrict the amount of water pumping that can occur to deliver water for agricultural, municipal, industrial, groundwater, and refuge uses in California;

(15) Data on the difference between water demand and reliable water supplies for various regions south of the ~~delta~~ Delta, including the San Joaquin Valley, indicate there is a significant annual gap between reliable water supplies to meet agricultural, municipal and industrial, groundwater, and refuges water needs within the South of Delta and Friant Division of the Central Valley Project and the State Water Project south of the Sacramento-San Joaquin River Delta and north of the Tehachapi mountain range and the demands of those areas. This gap varies depending on the methodology of the analysis performed, but can be represented in the following ways:

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(A) For Central Valley Project South-of-Delta water service contractors, if it is assumed that a water supply deficit is the difference in the amount of water available for allocation versus the maximum contract quantity, ~~particularly in more recent years,~~ then the water supply deficits that have developed from 1992 to 2014 as a result of ~~legislative and regulatory~~ changes besides natural variations in hydrology during this timeframe range between 720,000 and 1,100,000 acre-feet.

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(B) For Central Valley Project and State Water Project water service contractors south of the Delta and north of the Tehachapi mountain range, if it is assumed that a water supply deficit is the difference between reliable water supplies, including maximum water contract deliveries, safe yield of groundwater, safe yield of local and surface supplies and long-term contracted water transfers, and water demands, including water demands from agriculture, municipal and industrial and refuge contractors, then the water supply deficit ranges between approximately 2,500,000 to 2,700,000 acre-feet.

~~(C) The California Water Plan evaluated outcomes under current conditions under 198 combinations of climate and growth scenarios, projecting a range of urban and agricultural reliability into the future. Reliability in this instance is defined as the percentage of years in which demand is sufficiently met by supply. Reliability across a range of futures within the San Joaquin Valley can be presented as:~~

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(A) Expert panel reviews have concluded that instantaneous water velocities in the tidal Delta affect juvenile salmonids, not “tidally average” flows, as previously assumed. Based on instantaneous water velocity modeling, water exports have a much smaller area of effect than was previously believed;

(B) Tagging studies conducted since 1993 (representing more than 28 million fish) demonstrate that the proportion of Sacramento Basin origin Chinook salmon entrained into the pumping facilities (including pre-screen losses) are on average less than 1/10 of 1%; and

(C) Telemetric studies of Sacramento Basin and San Joaquin Basin origin juvenile Chinook salmon have not demonstrated any significant adverse effect from water exports on fish survival.

(17) Data of pumping activities at the Central Valley Project and State Water Project delta pumps identifies that, on average from Water Year 2009 to Water Year 2014, take of Delta smelt is 80 percent less than allowable take levels under pumping activity takes 893 delta Delta smelt annually with an authorized take level of 5,003 delta Delta smelt annually according to the biological opinion issued December 15, 2008.

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(18) Data of field sampling activities of the Interagency Ecological Program located in the Sacramento-San Joaquin Estuary identifies that, on average from 2005 to 2013, the program “takes” 3,500 delta smelt during annual surveys with an authorized “take” level of 33,480 delta smelt annually – according to the biological opinion issued December 9, 1997.

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(1819) It is worth exploring whether there is a way to implement the biological opinions that would preserve the protections afforded listed fish and simultaneously increase water deliveries to the Central Valley Project and State Water Project without weakening environmental laws or protections.

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(20) In 2014, better information exists than was known in 2008 concerning conditions and operations that may or may not lead to high salvage events that jeopardize the fish populations, and what alternative management actions can be taken to avoid jeopardy.

(2021) Alternative management strategies, such as trapping and barging juvenile salmon through the Delta, removing non-native species, enhancing habitat, and monitoring fish movement and location in real-time, and improving water quality in the Delta can contribute significantly to protecting and recovering these endangered fish species, and at potentially lower costs to water supplies.

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(2122) Resolution of fundamental policy questions concerning the extent to which application of the Endangered Species Act affects the operation of the Central Valley Project and State Water Project is the responsibility of Congress.

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### SEC. 3. DEFINITIONS.

In this Act:

(1) DELTA.—The term “Delta” means the Sacramento-San Joaquin Delta and the Suisun Marsh, as defined in sections 12220 and 29101 of the California Public Resources Code.

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(2) Export Pumping Rates.—The term “export pumping rates” means the rates of pumping at the ~~C.W. “Bill” Jones Pumping Plant and the Harvey O. Banks Pumping Plant~~, in the southern Delta.

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~~(3) JEOPARDY.—The term “jeopardy” means to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.~~

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(5) LISTED SALMONID SPECIES.—The term “listed salmonid species” means natural origin steelhead, natural origin genetic spring run Chinook, and genetic winter run Chinook salmon including hatchery steelhead or salmon populations within the evolutionary significant unit (ESU) or distinct population segment (or DPS).

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(5) Significant NEGATIVE IMPACT ON THE LONG-TERM SURVIVAL.—The term “significant negative impact on the long-term survival” means to reduce appreciably the likelihood of the survival of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.

(6) OMR.—The term “OMR” means the Old and Middle River in the Delta.

(7) OMR FLOW OF -5000 CFS.—The term “OMR flow of -5000 cfs” means Old and Middle River flow of negative 5,000 cubic feet per second as described in ~~measured by~~—

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(A) the smelt biological opinion; and

(B) the salmonid biological opinion.

(8) SALMONID BIOLOGICAL OPINION.—The term “salmonid biological opinion” means the biological opinion issued by the National Marine Fisheries Service on June 4, 2009.

(9) SMELT BIOLOGICAL OPINION.—The term “smelt biological opinion” means the biological opinion on the Long-Term Operational Criteria and Plan for coordination of the Central Valley Project and State Water Project issued by the United States Fish and Wildlife Service on December 15, 2008.

(10) STATE.—The term “State” means the State of California.

## TITLE I—ADJUSTING DELTA SMELT MANAGEMENT BASED ON INCREASED REAL-TIME MONITORING AND UPDATED SCIENCE

### SEC. 101. DEFINITIONS.

In this title:

(1) DIRECTOR.—The term “Director” means the Director of the United States Fish and Wildlife Service.

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(2) DELTA SMELT.—The term “Delta smelt” means the fish species with the scientific name *Hypomesus transpacificus*.

(3) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

SEC. 102. REVISE INCIDENTAL TAKE LEVEL  
CALCULATION FOR DELTA SMELT TO REFLECT NEW  
SCIENCE.

(a) No later than October 1, 2015, and at least every five years thereafter, the Director of Fish and Wildlife Service, in cooperation with other federal, state, and local agencies, shall use the best scientific and commercial data available to complete a review and, ~~if warranted, a modification of~~ modify the method used to calculate the incidental take levels for adult and larval/juvenile Delta smelt in the 2008 delta-smelt biological opinion that takes into account all life stages, among other considerations,—  
(a) salvage information collected since at least 1993; available over at least 18 years;  
(b) updated or more recently developed statistical models;  
(c) updated scientific and commercial data; and  
(d) the most recent information regarding the environmental factors driving delta-Delta smelt salvage.

(b) Modified Incidental Take Level.—Unless the Director determines in writing that one or more all or part of the requirements described in paragraphs (1) through (4) below of subsection (a) are not appropriate, the modified incidental take level described in subsection (a) shall—

- (1) Be normalized for the abundance of prespawning adult Delta smelt using the Fall Midwater Trawl Index or other index;
- (2) Be based on a simulation of the salvage that would have occurred from 1993 through 2012 if OMR flow has been consistent with the smelt biological opinions;
- (3) Base the simulation on a correlation between annual salvage rates and historic water clarity and OMR flow during the adult salvage period; and
- (4) Set the incidental take level as the 80 percent upper prediction interval derived from simulated salvage rates since at least 1993;

SEC. 103. FACTORING INCREASED REAL-TIME  
MONITORING AND UPDATED SCIENCE INTO DELTA  
SMELT MANAGEMENT.

(a) In General.—The Director shall use the best scientific and commercial data available to implement, continuously evaluate, and refine or amend, as appropriate, the reasonable and prudent alternative described in the 2008 delta-smelt biological opinion, as amended, and any successor opinions or court order, shall be implemented consistent

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The Secretary shall make all significant decisions that implement the smelt biological opinion, or any successor opinions, in writing, and shall document the significant facts upon which such decisions are made, consistent with Section 706 of Title 5 of the United States Code.

(b) Increased Monitoring to Inform Real-time Operations—~~Contingent upon funding,~~  
~~the~~The Secretary shall conduct additional surveys, on an annual basis at the appropriate time of the year based on environmental conditions, in collaboration with other ~~delta~~ Delta science interests.

(1) In implementing this section, ~~after seeking public input,~~ the Secretary shall —

(A) use the most ~~appropriate-accurate~~ survey methods ~~available~~ for the detection of ~~delta-Delta~~ smelt to determine the extent that adult ~~delta-Delta~~ smelt are distributed in relation to certain levels of turbidity, or other environmental factors that may influence salvage rate; and

(B) use results from appropriate survey methods for the detection of ~~delta~~ Delta smelt to determine how the Central Valley Project and State Water Project may be operated more efficiently to minimize salvage while maximizing ~~export pumping rates of water export without causing a significant negative impact on the long term survival of the Delta Smelt.~~

(2) During the period beginning on December 1, 2014 and ending March 31, 2015, and in each successive December through March period, if suspended sediment loads enter the Delta from the Sacramento River and the suspended sediment loads appear likely to raise turbidity levels in Old River north of the export pumps from values below 12 Nephelometric Turbidity Units (NTU) to values above 12 NTU, the Secretary shall—

(A) conduct daily monitoring using appropriate survey methods at locations including, but not limited to, the vicinity of Station 902 to determine the extent that adult Delta smelt are moving with turbidity toward the export pumps; and

(B) use results from the monitoring surveys ~~referenced in paragraph (A) at locations including, but not limited to, the vicinity of Station 902 to determine how increased trawling can inform daily real-time Central Valley Project and State Water Project operations to minimize salvage while maximizing export pumping rates of water export without causing a significant negative impact on the long-term survival of the Delta smelt.~~

(c) Periodic Review of Monitoring.—~~Within twelve months of the date of enactment of this title, and At at least once every 5 years thereafter, or sooner if the Secretary determines it is appropriate,~~ the Secretary shall—

(1) evaluate whether the monitoring program under subsection (b), combined with other monitoring programs for the Delta, is providing sufficient data to inform Central Valley Project and State Water Project operations to minimize salvage while

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maximizing export pumping rates without causing a significant negative impact on the long-term survival of the Delta smelt; and

(2) determine whether the monitoring efforts should be changed in the short- or long-term to provide more useful data.

(d) Delta Smelt Distribution Study.—

(1) IN GENERAL.— No later than January 1, 2016, and at least every five years thereafter, contingent upon funding, the Secretary, in collaboration with the California Department of Fish and Wildlife, the California Department of Water Resources, public water agencies, and other interested entities, Delta science partners, shall implement new targeted sampling and monitoring specifically designed to understand delta-Delta smelt abundance, distribution, and the types of habitat occupied by delta-Delta smelt during all life stages.

(2) SAMPLING.—The Delta smelt distribution study shall, at a minimum—

(A) include recording water quality and tidal data;

(B) be designed to understand delta-Delta smelt abundance, distribution, habitat use, and movements throughout the Bay-Delta, Suisun Marsh, and other areas occupied by the Delta smelt during all seasons;

(C) consider areas not routinely sampled by existing monitoring programs, including wetland channels, near-shore water, depths below 35 feet, and shallow-water; and

(D) use survey methods, including sampling gear, best suited to collect the most accurate data for the type of sampling or monitoring.

(e) Scientifically supported implementation of Old and Middle River flow requirements.—In implementing the provisions of the smelt biological opinion, or any successor biological opinion, pertaining to management of -reverse flow in the Old and Middle Rivers, the Secretary shall—

(1) consider the relevant provisions of the biological opinion or any successor biological opinion;

(2) manage reverse flow in Old and Middle Rivers as prescribed by the smelt biological opinion, or any successor biological opinion or court order, to maximizeminimize water supply reductions for the Central Valley Project and the State Water Project by establishing OMR flow at -5,000 cfs unless information developed by the Secretary under paragraphs (3) and (4) leads the Secretary to reasonably concludes that less negative OMR flows are necessary to avoid a significant negative impact on the long-term survival of the Delta smelt;

(3) document in writing any significant facts about real-time conditions relevant to the determinations of reverse OMR flow rates, including—

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(A) whether targeted real-time fish monitoring in Old River pursuant to this section, including monitoring in the vicinity of Station 902, indicates that a significant negative impact on the long-term survival of the Delta smelt is imminent; and

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(B) whether near-term forecasts with available salvage models show under prevailing conditions that OMR flow of -5000 cubic feet per second will cause a significant negative impact on the long-term survival of the Delta smelt; and

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(4) show in writing that any determination to manage OMR reverse flow at rates less negative than -5000 cubic feet per second is necessary to avoid a significant negative impact on the long-term survival of the Delta smelt, including an explanation of the data examined and the connection between those data and the choice made, after considering:

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(A) the findings in paragraph (3);

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(B) the potential effects of documented, quantified entrainment on subsequent smelt abundance, including consideration of the distribution of the population throughout the Delta,

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(C) the water temperature,

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(D) other significant factors relevant to the determination; and

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(E) whether any alternative measures could have a substantially lesser water supply impact.

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(5) for any subsequent biological opinion, make the showing required in paragraph (4) for any determination to manage OMR reverse flow at rates less negative than the upper limit in the biological opinion if the upper limit in the biological opinion is more negative than -5,000 cubic feet per second.

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(f) Memorandum of Understanding. No later than December 1, 2014, the Commissioner and the Director will execute a Memorandum of Understanding (MOU) to ensure that the smelt biological opinion is implemented in a manner that maximizes minimizes water supply losses while complying with applicable laws and regulations. If that MOU alters any procedures set out in the biological opinion, there will be no need to reinitiate consultation if those changes do not have a significant negative impact on the long-term survival new adverse effect on listed species and the implementation of the MOU would not be a major change to implementation of the biological opinion. Any change to procedures that does not create a significant negative impact on the long-term survival new adverse effect to listed species will not alter application of the take exemption in the incidental take statement in the biological opinion under the Endangered Species Act, section 7(o)(2).

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(g) Calculation of Reverse Flow in OMR. -Within 90 days of the enactment of this title, the Secretary is directed, in consultation with the California Department of Water

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Resources to revise the method used to calculate reverse flow in Old and Middle Rivers for implementation of the reasonable and prudent alternatives in the smelt biological opinion and the salmonid biological opinion, and any succeeding biological opinions, for the purpose of increasing Central Valley Project and State Water Project water supplies. The method of calculating reverse flow in Old and Middle Rivers shall be reevaluated not less than every five years thereafter to achieve maximum export pumping rates within limits established by the smelt biological opinion, the salmonid biological opinion, and any succeeding biological opinions.

## TITLE II—ENSURING SALMONID MANAGEMENT IS RESPONSIVE TO NEW SCIENCE

### SEC. 201. DEFINITIONS.

In this title:

(1) ASSISTANT ADMINISTRATOR.—The term “Assistant Administrator” means the Assistant Administrator of NOAA Fisheries.

(2) SECRETARY.—The term “Secretary” means the Secretary of Commerce.

(3) Other Affected Interests. — The term “other affected interests” means the State of California, subdivisions of the State of California, public water agencies and the tens of millions of people who benefit directly and indirectly from the multipurpose operations of the Central Valley Project and the State Water Project.

(4) Commissioner.—The term “Commission” means the Commissioner of the Bureau of Reclamation.

(5) DIRECTOR.—The term “Director” means the Director of the United States Fish and Wildlife Service.

### SEC. 202. REQUIRED SCIENTIFIC STUDIES.

(a) Trap and Barge Pilot Project to Increase Survivals Through the Delta.—The Assistant Administrator and the Commissioner shall, in collaboration with the U.S. Fish and Wildlife Service, the California Department of Fish and Wildlife, water agencies, and other interested parties, design, permit, implement and evaluate a pilot program to test the efficacy of an experimental trap and barge program to improve survival of juvenile salmonids emigrating from the San Joaquin watershed through the Delta, as further described below.

(1) Within 30 days of enactment, the Assistant Administrator shall convene a working group of the relevant agencies and other interested parties through which to develop and execute a plan for the design, budgeting, implementation and evaluation of such a pilot

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program, utilizing existing expertise on such trap and barge programs as may be available. Such plan shall detail a schedule and budget for the program, and identify the responsible parties for each element of the program.

(2) The Assistant Administrator shall provide an opportunity for 30 days of public review and comment on the pilot program and also simultaneously seek an expeditious independent peer review of the program to improve its rigor and likelihood of success.

(3) Within 60 days of Upon completion of (2), above, the Assistant Administrator shall complete the necessary design and evaluations of the pilot program and seek such authorizations and permits or other regulatory authorizations as may be required under federal law for its prompt implementation and evaluation by the Assistant Administrator, the Commissioner or such other parties as they determine most suitable.

(4) Subject to the availability of funding, The Assistant Administrator and the Commissioner shall seek to commence implementation of the pilot program in 2015 or as soon thereafter as is possible, and shall conduct such pilot for such period of time as needed to evaluate the efficacy of the program to improve survivals across a range of environmental conditions.

(5) The Assistant Administrator and the Commissioner shall jointly report annually to the Senate Environment and Public Works Committee and the House Committee on Natural Resources their progress in implementing this section, estimated survival rates through the Delta for both juvenile salmonids that were barged through the Delta and those that were not barged, and if survival rates are significantly higher for barged fish as compared to other outmigrating smolts, the Assistant Administrator's and Commissioner's recommendations regarding broadening the pilot program and any relevant recommendations pursuant to section 203

(b) Tagging studies.

(1) IN GENERAL.—The Assistant Administrator, in collaboration with other ~~delta~~ Delta science partners, shall implement tagging studies, including acoustic telemetry and PIT tagging studies as appropriate, wherein habitat, predators, flow conditions, or other factors are experimentally altered and the behavior and survival of tagged juvenile salmonids are observed. Studies may also be conducted to aid in the understanding of Chinook salmon and steelhead abundance, distribution, and survival.

(2) SAMPLING.—The sampling—

(A) shall include recording water quality and tidal data;

(B) will be designed to aid in the understanding of salmonid abundance, distribution, and movements throughout the Bay Delta, including estimates of through Delta survival from Knights Landing or from Mossdale to Chipps Island; and

(C) will supplement, not supplant, ongoing acoustic tag and coded wire survival studies in the San Joaquin and Sacramento Rivers which the Assistant Administrator determines are crucial for trend monitoring.

(c) The Assistant Administrator shall accept recommendations from CVP and SWP service area water contractors on studies of other alternative management measures that may increase the survival of listed salmonid species.

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SEC. 203. PROCESS FOR ENSURING SALMONID  
MANAGEMENT IS RESPONSIVE TO NEW SCIENCE.

(a) General directive. The reasonable and prudent alternative described in the salmonid biological opinion allows for and anticipates adjustments in project operation parameters ~~operating criteria~~ to reflect the best scientific and commercial data currently available, and authorizes efforts to test and evaluate improvements in operations that will meet applicable regulatory requirements and maximize enable improvements in water supply reliability. Implementation of the reasonable and prudent alternative described in the salmonid biological opinion shall be adjusted accordingly as new scientific and commercial data are developed. The Commissioner and the Assistant Administrator ~~shall fully be hereby directed to~~ utilize these authorities ~~fully~~ as described below.

(b) Annual reviews of certain project operations ~~operating criteria~~. No later than December 31, 2015, and at least annually thereafter,

(1) The Commissioner, in consultation with and with the assistance of the Assistant Administrator shall ~~commence annual efforts to~~ examine and identify adjustments to the initiation of Action IV.2.3 pertaining to negative OMR flows, subject to paragraph (5).

(2) The Commissioner, in consultation with and with the assistance of the Assistant Administrator, shall examine and identify adjustments in the timing, triggers or other operational details relating to the implementation of pumping restrictions in Action IV.2.1 pertaining to the inflow to export requirements, subject to paragraph (5).

(3) Pursuant to the consultation and assessments carried out under paragraphs (1) and (2) of this subsection, the Commissioner ~~and the Assistant Commissioner~~ shall jointly make recommendations to the ~~Assistant Administrator~~ Secretary of the Interior and to the Secretary of Commerce ~~secretaries~~ on adjustments to project operations that, in the exercise of the adaptive management provisions of the salmonid biological opinion, ~~can improve water supplies will reduce water supply impacts of the salmonid biological opinion on the Central Valley Project and the California State Water Project~~ and are consistent with the requirements of applicable law and as further described in subsection (c).

(4) The Secretary of Commerce and the Secretary of the Interior shall direct the Commissioner ~~and Assistant Administrator to~~ implement ~~those recommended~~ adjustments to project operations for which the conditions under subsection (c) are met.

(5) The Assistant Administrator and the Commissioner shall review and identify adjustments to project operations with water supply restrictions in any successor biological opinion to the salmonid biological opinion, applying the provisions of this section to those water supply restrictions where there are references to Actions IV.2.1 and IV.2.3.

(c) Adjustments to project operations that shall be implemented. ~~After In receiving reviewing~~ the recommendations under subsection (b), ~~the~~ Secretary of the Interior and the Secretary of Commerce ~~secretaries shall direct the Commissioner and the Assistant Administrator to implement those operational adjustments~~ ~~recommendations the Assistant Administrator shall evaluate the effects of the recommended adjustments on listed species and shall recommend to the Commissioner adjustments for which, in aggregate:~~

(1) the net effect on listed species is equivalent to those of the underlying project

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operational parameters in the salmonid biological opinion, taking into account both

(i) efforts to minimize the adverse effects of the adjustment to project operations;  
and

(ii) whatever additional actions or measures may be implemented in conjunction with the adjustments to operations to offset the adverse effects to listed species, consistent with (d), that are in excess of the adverse effects of the underlying operational parameters, if any; and mitigate its effects; and

(1)(2) the effects of the adjustment can be reasonably expected to fall within the incidental take authorizations.

(d) Taking into account offsetting species survival benefits from other measures:

(1) When examining and identifying opportunities to offset the potential adverse effect of adjustments to operations under subsection (c)(1)(ii), the Commissioner and the Assistant Administrator shall take into account the potential species survival improvements that are likely to result from other measures which, if implemented in conjunction with such adjustments, would offset adverse effects, if any of the adjustments. When evaluating offsetting measures, the Commissioner and the Assistant Administrator shall consider the type, timing and nature of the adverse effects, if any, to specific species and ensure that the measures likely provide equivalent overall benefits to the listed species in the aggregate, as long as the change will not cause a significant negative impact on the long-term survival of a listed salmonid species

(e) Framework for examining opportunities to minimize or offset the potential adverse effect of adjustments to operations operating criteria.—Not later than December 31, 2015, and every five years thereafter, the Assistant Administrator shall, in collaboration with the Director of the California Department of Fish and Wildlife, based on the best scientific and commercial data available and for each listed salmonid species, issue estimates of the increase in through-Delta survival the Secretary expects to be achieved—

(1) with-through restrictions on export pumping rates restrictions as specified by Action IV.2.3 as compared to limiting OMR flow to a fixed rate of -5000 cubic feet per second within the time period Action IV.2.3 is applicable, based on a given rate of San Joaquin River inflow to the Delta and holding other relevant factors constant;

(2) with-through San Joaquin River inflow to export restrictions on export pumping rates specified within Action IV.2.1 as compared to the export restrictions in the April/May period imposed by the State Water Resources Control Board decision D-1641, based on a given rate of San Joaquin River inflow to the Delta and holding other relevant factors constant;

(3) by-through a trap and barge program based on the experience of other systems to the extent they are comparable, and the study described in section 202, as that information becomes available;

(4) through physical habitat restoration improvements;

(5) through predation control programs;

(6) through the installation of temporary barriers, the management of Cross Channel

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Gates operations, and other projects affecting flow in the Delta;

(7) by through salvaging fish that ~~may have been~~ entrained near the entrance to Clifton Court Forebay; and

(8) through by any other management measures that may provide equivalent or better protections benefits for listed species- while maximizing export pumping rates without causing a significant negative impact on the long-term survival of a listed salmonid speieesspecies-with improvements to water supplies.

(9) through development and implementation of conservation hatchery programs for salmon and steelhead to aid in the recovery of listed salmon and steelhead species.

(f) Survival estimates ~~to be quantitative to the maximum extent feasible.~~

(1) To the maximum extent feasible, ~~t~~The Assistant Administrator shall make these quantitative estimates of survival and determinations quantitatively to the maximum extent feasible, such as a range of percentage increases in through-Delta survival that could result from the management measures, and if the scientific information is lacking for quantitative estimates, shall do so on qualitative terms based upon the best available science.

(2) If the Assistant Administrator provides qualitative survival estimates for a species resulting from one or more management measures, the Secretary shall, to the maximum extent feasible, rank the management measures described in subsection (e) in terms of their most likely expected contribution to increased through-Delta survival relative to the other measures.

(3) If at the time the Assistant Administrator conducts the analysis under subsection (b), the Secretary has not issued ~~the and~~ estimates of increased through-Delta survival benefits from different management measures pursuant to subsection (e), the Secretary shall compare the protections benefits to the species from different management measures based on the best scientific and commercial data available at the time.

(g) Comparison of adverse consequences for alternative management measures of equivalent equal protection for a species benefit to the salmon.—

(1) For the purposes of this subsection and subsection (c)—

(A) The alternative management measure or combination of alternative management measures identified in paragraph (2) shall be known as the “equivalent alternative measure.”

(B) The existing measure or measures identified in subparagraphs (2)(A),(B),(C), or (D) shall be known as the “equivalent existing measure.”

(C) An “equivalent increase in through-Delta survival rates for listed salmonid species” shall mean an increase in through-Delta survival rates that is equivalent when considering the change in through-Delta survival rates for the listed salmonid species in the aggregate, and not necessarily the same change for each individual species, as long as the change in survival rates will not cause a significant negative impact on the long-term survival of a listed salmonid species for each species remains consistent with the Endangered Species Act and implementing regulations.

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(2) As part of the reviews of project operations pursuant to subsection (b), the Assistant Administrator shall determine whether any alternative management measures or combination of alternative management measures listed in subsection (e)(3) through (8) would provide an increase in through-Delta survival rates for listed salmonid species that is equivalent to the increase in through-Delta survival rates for listed salmonid species from the following:

(A) through restrictions on export pumping rates with export restrictions as specified by Action IV.2.3, as compared to limiting OMR flow to a fixed rate of -5000 cubic feet per second within the time period Action IV.2.3 is applicable;

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(B) through restrictions on export pumping rates with export restrictions as specified by Action IV.2.3, as compared to a modification of Action IV.2.3 that would provide additional water supplies, other than that described in subparagraph (A);

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(C) through with San Joaquin River inflow to export restrictions on export pumping rates specified within Action IV.2.1, as compared to the export restrictions in the April/May period imposed by the State Water Resources Control Board decision D-1641, or

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(D) through San Joaquin River inflow to export restrictions on export pumping rates specified within Action IV.2.1, as compared to a modification of Action IV.2.1 that would reduce water supply impacts of the salmonid biological opinion on the Central Valley Project and the California State Water Project, other than that described in subparagraph (C).

(3) If the Assistant Administrator identifies an equivalent alternative measure pursuant to paragraph (2), the Assistant Administrator shall determine whether

(A) it is technically feasible and within federal jurisdiction to implement the equivalent alternative measure, and

(B) the State or local agency with jurisdiction has certified in writing to the Assistant Administrator that it has the authority and capability to implement the pertinent equivalent alternative measure, or

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(C) the adverse consequences of doing so are less than the adverse consequences of the equivalent existing measure, including a concise evaluation of the adverse consequences to other affected interests.

(4) If the Assistant Administrator makes the findings in subparagraph (3)(A) and (B), the Assistant Administrator and the Commissioner shall adjust project operations the operating criteria in the salmonid biological opinion pursuant to this subsection to implement the equivalent alternative measure in place of the equivalent existing measure in order to increase export rates of pumping water supplies to the greatest extent possible while maintaining a net combined effect of equivalent through-Delta survival rates for the listed salmonid species.

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(h) Tracking adverse effects beyond the range of effects accounted for in the salmonid biological opinion and coordinated operation with the smelt biological opinion.

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(1) Among the adjustments to the project operations considered through the adaptive management process under this section, the Assistant Administrator and the Commissioner shall

(A) Evaluate the effects on listed salmonid species and water supply of the potential adjustment to operational criteria described in subparagraph (B); and

(B) Consider requiring that before some or all of the provisions of Actions IV.2.1. or IV.2.3 are imposed in any specific instance, the Assistant Administrator show that the implementation of these provisions in that specific instance is necessary to avoid a significant negative impact on the long-term survival of a listed salmonid species, additional adverse effects upon listed salmonid species beyond the range of effects analyzed and accounted for in the salmonid biological opinion

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(2) The Assistant Administrator, the Director and the Commissioner, in coordination with State officials as appropriate, shall establish operational criteria to coordinate management of OMR flows under the smelt and salmonid biological opinions, in order to take advantage of opportunities to provide additional water supplies from the coordinated implementation of the biological opinions.

(i) Real-Time Monitoring and Management. The Assistant Administrator and the Commissioner shall, through the NMFS adaptive management salmonid biological opinion provisions, analyze whether date-certain triggers that limit OMR reverse flow to -5000 cubic feet per second could be adjusted to instead use real-time migration information on salmonids. If the analysis shows that the use of real-time information to trigger OMR flow limitations would improve water supply without causing a significant negative impact on the long-term survival of Winter-run Chinook salmon, then such real-time management triggers shall be implemented.

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(j) If the quantitative estimates of through-Delta survival established by the Secretary for the management measures in (b)(2) exceed the through-Delta survival established for the RPAs, the Secretary shall implement the management measures in (b)(2) as a prerequisite to implementing the RPAs contained in the BiOps.

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(k) Consistent with Section 706 of Title 5 of the United States Code, decisions of the Assistant Administrator and the Commissioner described in paragraphs (b) through (i) of this Section 203 shall be made in writing, on the basis of best scientific and commercial data currently available, and shall document the significant facts upon which such decisions are made.

## SEC. 204. PILOT PROGRAM TO PROTECT NATIVE ANADROMOUS FISH IN THE STANISLAUS RIVER.

(a) Establishment of Non-native Predator Fish Removal Program- The Assistant Administrator and districts in consultation with the United States Fish and Wildlife Service and the California Department of Fish and Wildlife shall jointly develop and conduct a pilot non-native predator fish removal program to remove non-native striped bass, smallmouth bass, largemouth bass, black bass, and other non-native predator fishes from the Stanislaus River. The pilot program shall--

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(1) be scientifically based;

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1 (2) include methods to quantify the number and size of predator fishes removed each year the  
2 impact of such removal on the overall abundance of predator fishes and the impact of such  
3 removal on the populations of juvenile anadromous fish found in the Stanislaus River by, among  
4 other things evaluating the number of juvenile anadromous fish that migrate past the rotary  
5 screw trap located at Caswell;

6 (3) among other methods, use wire fyke trapping, portable resistance board weirs, and boat  
7 electrofishing which are among the most effective predator collection techniques that minimize  
8 effects to native anadromous fish;

9 (4) be developed including the application for all necessary scientific research and species  
10 enhancement permits under section 10(a)(1) of the Endangered Species Act of 1973 (16 U.S.C.  
11 1539(a)(1)), for the performance of the pilot program, not later than 6 months after the date of  
12 the enactment of this Act;

13 (5) be implemented as quickly as possible following the issuance of all necessary scientific  
14 research and species enhancement permits needed to begin the pilot program; and

15 (6) be implemented for a period of seven consecutive calendar years.

16 (b) Management- The management of the pilot program shall be the joint responsibility of the Assistant  
17 Administrator and the districts. Such parties shall work collaboratively to ensure the performance of the  
18 pilot program and shall discuss and agree upon among other things changes in the structure  
19 management personnel techniques strategy data collection reporting and conduct of the pilot  
20 program.

21 (c) Conduct-

22 (1) IN GENERAL- At the election of the districts the pilot program may be conducted by their  
23 own personnel qualified private contractors hired by the districts personnel of on loan to or  
24 otherwise assigned to NOAA Fisheries, or a combination thereof.

25 (2) PARTICIPATION BY NOAA FISHERIES- In the event the districts elect to conduct the program  
26 using their own personnel or qualified private contractors hired by them, the Assistant  
27 Administrator has the option to assign an employee of on loan to or otherwise assigned to  
28 NOAA Fisheries to be present for all activities performed in the field. Such presence shall ensure  
29 compliance with the agreed upon elements specified in subsection (b). The districts shall pay  
30 100 percent of the cost of such participation as specified in subsection (d).

31 (3) TIMING OF ELECTION- The districts shall notify the Assistant Administrator of their election  
32 on or before October 15 of each calendar year of the pilot program, which election shall apply to  
33 the work performed in the subsequent calendar year.

34 (d) Funding-

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1 (1) CONTRIBUTED FUNDS- The Assistant Administrator is authorized to receive and expend  
2 contributed funds for the purposes for which the funds contributed in a like manner as if said  
3 sums had been specifically appropriated for said purposes.

4 (2) ANNUAL FUNDING- The districts shall be responsible through contributed funds for 100  
5 percent of the cost of the pilot program. On or before December 1 of each year of the pilot  
6 program, the Assistant Administrator shall submit to the districts an estimate of the cost to be  
7 incurred by the NOAA Fisheries in the following calendar year if any including the cost of any  
8 data collection and posting under subsection (e). If an amount equal to the estimate is not  
9 provided through contributed funds, or any other fund as directed by the Assistant  
10 Administrator by the districts on or before December 31 of each year (a) the NOAA Fisheries  
11 shall have no obligation to conduct the pilot program activities otherwise scheduled and (b) the  
12 districts shall be prohibited from conducting any aspect of the pilot program, until full payment  
13 is made by the districts.

14 (3) ACCOUNTING- On or before September 1 of each calendar year, the Assistant Administrator  
15 shall provide an accounting of the prior calendar year's expenses to the districts. If the estimate  
16 paid by the districts was less than the actual costs incurred by the NOAA Fisheries the districts  
17 shall have until September 30 of that calendar year to pay the difference to the fund identified  
18 by the Assistant Administrator in subsection (d)(1), or NOAA Fisheries shall have no obligation to  
19 conduct the pilot program activities otherwise scheduled. If the estimate paid by the districts  
20 was greater than the actual costs incurred by the NOAA Fisheries then a credit shall be provided  
21 to the districts, which shall be deducted from the estimate payment the districts must make for  
22 the work performed by the NOAA Fisheries if any in the next calendar year.

23 Administrator, by the districts on or before December 31 of each year, (a) the NOAA Fisheries  
24 shall have no obligation to conduct the pilot program activities otherwise scheduled, and (b) the  
25 districts shall be prohibited from conducting any aspect of the pilot program until full payment  
26 is made by the districts.

27 (e) Reporting and Evaluation-

28 (1) IN GENERAL- On or before the 15th day of each month the Assistant Administrator shall post  
29 on the website of the NOAA Fisheries a tabular summary of the raw data collected in the prior  
30 month.

31 (2) REPORT- On or before June 30 of the calendar year following the completion of the program  
32 the Assistant Administrator and districts shall jointly publish a peer reviewed report that--

33 (A) discusses the findings and conclusions of the pilot program;

34 (B) synthesizes the data collected under paragraph (1); and

35 (C) makes recommendations for further study and action.



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(f) Permits Process-

(1) Not later than 180 days after filing of an application Assistant Administrator and the districts, the Secretary of the Interior the Secretary of Commerce or both as appropriate shall issue all necessary scientific research and species enhancement permits under section 10(a)(1) of the Endangered Species Act (16 U.S.C. 153(9)(a)(1)), for the performance of the pilot program.

(3) All permits issued shall be in the name of the NOAA Fisheries and the districts.

(4) Districts may delegate the authority to administer the permit authority to any qualified private contractor retained in accordance with subsection (c).

(5) The pilot program including amendments thereto by the appropriate Federal and State agencies, shall constitute a conservation plan that complies with the requirements of section 10(a)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(2)).

(g) NEPA.--Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) shall not apply with respect to section 402 and the issuance of any permit under this subsection during the seven year period beginning on the date of the implementation of the pilot program.

(h) Emergency Environmental Reviews – To expedite this environmentally beneficial program for the conservation of threatened and endangered species the Secretary of the Interior shall consult with the Council on Environmental Quality in accordance with Section 1506.11 of title 40, Code of Federal Regulations (including successor regulations) to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 for this section.

(i) Definitions- For the purposes of this section:

(1) ASSISTANT ADMINISTRATOR- The term 'Assistant Administrator' means the Assistant Administrator of National Oceanic and Atmospheric Administration, NOAA Fisheries

(2) DISTRICTS- The term 'districts' means the Oakdale Irrigation District and the South San Joaquin Irrigation District.

(3) PILOT PROGRAM- The term 'program' means the pilot non-native predator removal program established under this section.

(j) Sunset- The authorities provided under this section shall expire seven years after the implementation of the pilot program.

SEC. 205. CALFED INVASIVE SPECIES PILOT PROJECTS  
IN THE SACRAMENTO-SAN JOAQUIN BAY DELTA AND  
ITS TRIBUTARIES.

(a) FINDINGS.—Congress finds that—

(1) The Sacramento-San Joaquin Bay Delta and its Tributaries—

(A) is one of the largest and most diverse estuaries in the United States,

(B) is a natural treasure and a vital link in California's water system, and

(C) has native biodiversity important to the ecological and economic systems of California, including water deliveries to agriculture, municipalities and to the environment and fisheries industries, and

(D) has river tributaries important for rearing of salmon and steelhead smolts which experience a high level of predation from non-native species.

(2) Past, present and future introductions of invasive species are and will be a major factor in the decline of native pelagic and anadromous endangered or threatened species in the Sacramento–San Joaquin Bay Delta and its tributaries.

(3) More than 250 nonnative aquatic and plant species have been introduced into the Delta and its tributaries; of these, at least 185 species have become established and have altered the Sacramento-San Joaquin Bay Delta watershed's ecosystem.

(4) The Bay Delta Conservation Plan, the Recovery Plan for the Evolutionarily Significant Units of Sacramento River Winter-run Chinook Salmon and Central Valley Spring-run Chinook Salmon and the Distinct Population Segment of the Central Valley Steelhead, the Recovery Plan for the Sacramento-San Joaquin Delta Native Fishes, and the multiple 5 year reviews of those plans all highlight that introduced nonnative invasive species are a significant factor in the decline of native fish species. These nonnative species, which include invasive aquatic vegetation, predators, and competitors, directly or indirectly cause biological stress for pelagic and anadromous endangered or threatened fish species in the Sacramento-San Joaquin Bay-Delta and its tributaries.

(5) If threats by nonnative species to native fish species are not addressed, there is a probability that native species of the Sacramento-San Joaquin Bay-Delta watershed's pelagic and anadromous community will go extinct.

(6) The CALFED legislation (Public Law 108-361) authorized a program to prevent, control, and eradicate invasive species, but it has not been implemented to date.

(7) A focused pilot program needs to be conducted within the Delta and river tributaries to reduce threats to native listed species by nonnative species. Reducing nonnative stressors on native listed species will contribute to both native listed species recovery and lowering the impact on downstream water users as those native listed species recover.

(b) PILOT PROJECTS TO IMPLEMENT CALFED INVASIVE SPECIES PROGRAM.

(1) Not later than January 1, 2017, the Secretary of the Interior, in collaboration with the Secretary of Commerce and the Director of the California Department of Fish and Wildlife,

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1 may begin pilot projects to implement the invasive species program, including prevention,  
2 control and eradication authorized pursuant to Section 103(d)(6)(A)(iv) of Public Law 108-  
3 361. The pilot projects shall:

4 (A) seek to reduce invasive aquatic vegetation, predators, and other competitors  
5 which are major factors in the decline of native listed pelagic and anadromous species  
6 that occupy the Sacramento and San Joaquin Rivers and their tributaries and the  
7 Sacramento-San Joaquin Bay-Delta; and

8 (B) address how to remove, reduce, or control the effects of species including:  
9 Asiatic clams, silversides, gobies, Brazilian water weed, largemouth bass, smallmouth  
10 bass, striped bass, crappie, bluegill, white and channel catfish, and brown bullheads.

11 (2) The Secretary of the Interior's efforts, in consultation with the Secretary of  
12 Commerce, shall consist of the following phases:

13 (A) Phase 1. The Secretary of the Interior shall convene a panel of experts,  
14 including experts recommended by the State of California, to:

- 15 (i) Identify the non-native species having the greatest impact on the  
16 viability of native pelagic and anadromous native listed species; and  
17 (ii) Identify the non-native species for which actions to reduce or control the  
18 population is determined to be possible; and  
19 (iii) Design a study to reduce the non-native species identified in clauses (i)  
20 and (ii) and prepare a cost estimate to implement this study.

21 (B) Phase 2. The Secretary of the Interior, in consultation with the Secretary of  
22 Commerce, shall test the general viability of nonnative reduction methods, including  
23 either direct predator removal or alteration of channel conditions, or some combination  
24 thereof, through pilot projects at multiple sites in addition to the projects on the  
25 Stanislaus River pursuant to Section 204, including known hotspots of predator  
26 aggregation or activity, such as:

- 27 (i) Clifton Court Forebay,  
28 (ii) Central Valley Project intakes,  
29 (iii) Head of Old River,  
30 (iv) Georgiana Slough,  
31 (v) Old and Middle Rivers,  
32 (vi) Franks Tract,  
33 (vii) Paintersville Bridge,  
34 (viii) individual river tributaries important for wild populations of  
35 anadromous species listed as threatened or endangered under the Endangered  
36 Species Act of 1973,  
37 (ix) Human-made submerged structures, and  
38 (x) Salvage release sites.

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(C) Phase 3. If determined to be effective, the Secretary of the Interior, and the Secretary of Commerce, shall implement nonnative reduction methods at a larger number of sites, incorporating information learned during the first and second phase.

(3) The Secretary of the Interior shall collect data associated with the implementation of the projects above, and shall specifically collect data on the impact on

(A) pelagic and anadromous species listed as threatened or endangered under the Endangered Species Act of 1973,

(B) water quality, and

(C) water supply.

(4) After assessing the data described in subparagraph (2), the Secretary of the Interior, in collaboration with the Secretary of Commerce and the Director of the California Department of Fish and Wildlife, shall, if appropriate, annually recommend revisions to the reasonable and prudent alternatives contained in the salmonid biological opinion and the smelt biological opinion, or other administrative federal requirements governing the operation of the Central Valley Project and the State Water Project, that are likely to produce additional fishery, water quality, and water supply benefits.

(5) After the pilot projects are complete, a report describing the results of the program shall be used by the Assistant Administrator in making the survival estimates required by Section 203(f).

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(c) IMPLEMENTATION. The Secretary of the Interior shall implement the CALFED program described in subpart (b) for at least a period of seven consecutive years beginning on the date of implementation.

(d) REPORTING REQUIREMENTS. The Secretary of the Interior shall provide reports to the Senate Committee on Environment and Public Works and the House Committee on Natural Resources on the following:

(1) No later than January 1, 2016, a description of the projects described in subpart (b), including the application for all necessary scientific research and species enhancement permits under section 10(a) (1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)), and for the performance of the CALFED invasive species Program.

(2) Upon the completion of Phase 1 as described in subsection (b)(1)(A), a report describing its implementation and cost effectiveness.

(3) Two years after the project begins, a report describing the progress of the eradication of the nonnative species in the Sacramento-San Joaquin Bay-Delta and its tributaries and how such efforts have helped the Recovery Plans for endangered and threatened Anadromous and Pelagic Species in the Sacramento-San Joaquin Bay-Delta watershed and the associated cost effectiveness of each control measure.

(4) After the pilot projects are complete, a report describing the results of the program, including recommendations on whether the program should be continued, how the program may be taken to full scale in the most cost effective manner, and how a mitigation program for the Central Valley Project allowable under section 10(a)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)) could be implemented.

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(e) EMERGENCY ENVIRONMENTAL REVIEWS. To expedite this environmentally beneficial program for the conservation of threatened and endangered species, the Secretary of the Interior shall consult with the Council on Environmental Quality in accordance with section 1506.11 of title 40, Code of Federal Regulations (including successor regulations) to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 for this program.

~~SEC. 206. MARK FISHERY AND HARVEST  
MANAGEMENT.~~

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TITLE III—OPERATIONAL FLEXIBILITY AND DROUGHT  
RELIEF

SEC. 301. FINDINGS.

Congress finds that—

(1) Based on the congressional findings in Sec. 2 of this Act, it is appropriate and necessary for federal agencies to exercise the maximum amount of flexibility provided to them under the applicable laws and regulations to maximize delivery of water supplies while providing substantially similar levels of protection

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SEC. 302. DEFINITIONS.

In this title:

(1) CENTRAL VALLEY PROJECT.—The term “Central Valley Project” has the meaning given the term in section 3403 of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4707).

(2) KLAMATH PROJECT.—The term “Klamath Project” means the Bureau of Reclamation project in the States of California and Oregon, as authorized under the Act of June 17, 1902 (32 Stat. 388, chapter 1093).

(3) RECLAMATION PROJECT.—The term “Reclamation Project” means a project constructed pursuant to the authorities of the reclamation laws and whose facilities are wholly or partially located in the State.

(4) SECRETARIES.—The term “Secretaries” means—

(A) the Administrator of the Environmental Protection Agency;

(B) the Secretary of Agriculture;



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(C) the Secretary of Commerce; and

(D) the Secretary of the Interior.

(5) STATE WATER PROJECT.—The term “State Water Project” means the water project described by California Water Code section 11550 et seq., and operated by the California Department of Water Resources.

(6) State.—The term “State” means the State of California.

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## SEC. 303. OPERATIONAL FLEXIBILITY IN TIMES OF DROUGHT.

### (a) Water Supplies.—

(1) IN GENERAL.—In response to a declaration of a state of drought emergency by the Governor of California and for the period of time such a drought declaration remains in effect, or as long as 90% of the state remains in a “moderate drought” as determined by the U.S. Drought monitor, the Secretaries shall provide the maximum quantity of water supplies practicable to Central Valley Project agricultural, municipal and industrial, and refuge service and repayment contractors, State Water Project contractors, and any other tribe, locality, water agency, or municipality in the State, by approving, consistent with applicable laws (including regulations), projects and operations to provide additional water supplies as quickly as practicable based on available information to address the emergency conditions.

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(2) APPLICATION.—Paragraph (1) applies to projects or operations involving the Klamath Project if the projects or operations would benefit Federal water contractors in the State

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(b) Administration.—In carrying out subsection (a), the Secretaries shall, consistent with applicable laws (including regulations)—

(1) issue all necessary permit decisions under the authority of the Secretaries not later than 30 days after the date on which the Secretaries receive a completed application from the State to place and use temporary barriers or operable gates in Delta channels to improve water quantity and quality for the State Water Project and the Central Valley Project south of Delta water contractors and other water users, on the condition that the barriers or operable gates—

(A) do not result in a significant negative impact on the long-term survival of listed species within the Delta and provide benefits or have a neutral impact on for species protection and in-Delta water user water quality; and

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(B) are designed so that formal consultations under section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) are not necessary;

(2) require the Director of the United States Fish and Wildlife Service and the Commissioner of Reclamation—

(A) to complete, not later than 30 days after the date on which the Director or the Commissioner receives a complete written request for water transfer associated with voluntarily following nonpermanent crops in the State, all requirements under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) necessary to make final

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permit decisions on the request; and

(B) to grant any water transfer request described in subparagraph (A) to maximize the quantity of water supplies available for nonhabitat uses, on the condition that the following and associated water transfer are in compliance with applicable Federal laws (including regulations);

(3) adopt a 1:1 inflow to export ratio as measured as a 3-day running average at Vernalis during the period beginning on April 1, and ending on May 31, absent a determination in writing that a more restrictive inflow to export ratio is required to avoid a significant negative impact on the long-term survival of a listed salmonid species; provided that the a 1:1 inflow to export ratio shall apply for the increment of increased flow of the San Joaquin River resulting from the voluntary sale, transfers, or exchanges of water from agencies with rights to divert water from the San Joaquin River or its tributaries provided that Delta conditions are suitable to allow movement of the acquired, transferred, provided that Delta conditions are suitable to allow movement of the acquired, transferred, provided that Delta conditions are suitable to allow movement of the acquired, transferred, or exchanged water through the Delta consistent with the Central Valley Project's and the State Water Project's permitted water rights. Notwithstanding limitations on water transfers established by the United States Bureau of Reclamation's Biological Assessment dated August 2008, the smelt biological opinion, salmonid biological opinion, or any amendments to the foregoing, water transfers through the C.W. "Bill" Jones Pumping Plant or the Harvey O. Banks Pumping Plant may occur during any month provided water transfers comply with state law, including the California Environmental Quality Act; and

(4) Provide additional priority for eligible WaterSMART Reclamation projects that address drought conditions including projects that—

(A) provide emergency drinking and municipal water supplies to localities in a quantity necessary to meet minimum public health and safety needs;

(B) prevent the loss of permanent crops;

(C) minimize economic losses resulting from drought conditions; or

(D) provide innovative water conservation tools and technology for agriculture and urban water use that can have immediate water supply benefits.

(c) Accelerated Project Decision and Elevation.—

(1) IN GENERAL.— On request by the Governor of the State, the heads of Federal agencies shall use the expedited procedures under this subsection to make final decisions relating to local, state, or Federal project or operation, or to local or State projects or operations that require decisions by the Secretary of the Interior or the Secretary of Commerce to provide additional water supplies if the project's or operation's purpose is to provide relief for emergency drought conditions pursuant to subsections (a) and (b).

(2) REQUEST FOR RESOLUTION.—

(A) IN GENERAL.—On request by the Governor of the State, the head of a Federal

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(4) allow and facilitate, consistent with existing priorities, water transfers through the C.W. "Bill" Jones Pumping Plant or the Harvey O. Banks Pumping Plant from April 1 to November 30 provided water transfers comply with state law, including the California Environmental Quality Act.

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agency referenced in paragraph (1), or the head of another Federal agency responsible for carrying out a review of a project, as applicable, the Secretary of the Interior shall convene a final project decision meeting with the heads of all relevant Federal agencies to decide whether to approve a project to provide relief for emergency drought conditions.

(B) MEETING.—The Secretary of the Interior shall convene a meeting requested under subparagraph (A) not later than 7 days after the date on which the meeting request is received.

(3) NOTIFICATION.—On receipt of a request for a meeting under paragraph (2), the Secretary of the Interior shall notify the heads of all relevant Federal agencies of the request, including information on the project to be reviewed and the date of the meeting.

(4) DECISION.—Not later than 10 days after the date on which a meeting is requested under paragraph (2), the head of the relevant Federal agency shall issue a final decision on the project, subject to subsection (e)(2).

(5) MEETING CONVENED BY SECRETARY.—The Secretary of the Interior may convene a final project decision meeting under this subsection at any time, at the discretion of the Secretary, regardless of whether a meeting is requested under paragraph (2).

(d) Application.—To the extent that a Federal agency, other than the agencies headed by the Secretaries, has a role in approving projects described in subsections (a) and (b), this section shall apply to those Federal agencies.

(e) Limitation.—Nothing in this section authorizes the heads of applicable Federal agencies to approve projects—

(1) that would otherwise require congressional authorization; or

(2) without following procedures required by applicable law.

(f) ~~2015~~ Drought Plan. The Secretaries of Commerce and the Interior, in consultation with appropriate State officials, shall develop a drought operations plan for the duration of the existing drought emergency declaration of the State and until two subsequent normal or above normal water years have been recorded within the Central Valley Project 2015 that is consistent with the provisions of this section and other provisions of this Act intended to provide additional water supplies that could be of assistance during the current drought and takes into account that drought conditions could persist into 2016.

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## SEC. 304. OPERATION OF CROSS-CHANNEL GATES.

(a) In General.—The Secretary of Commerce and the Secretary of the Interior shall jointly—

(1) authorize and implement activities to ensure that the Delta Cross Channel Gates remain open to the maximum extent practicable using findings from the United States Geological Survey on diurnal behavior of juvenal salmonids, timed to maximize the peak flood tide period and provide water supply and water quality benefits for the duration of the drought emergency declaration of the State and until two subsequent normal or above normal water years have been recorded within the Central Valley Project, consistent with operational criteria and monitoring criteria developed pursuant to the Order Approving a Temporary Urgency Change in License and Permit Terms in Response to Drought

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Conditions of the California State Water Resources Control Board, effective January 31, 2014 (or a successor order) and other authorizations associated with it;

(2) with respect to the operation of the Delta Cross Channel Gates described in paragraph (1), collect data on the impact of that operation on—

(A) species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(B) water quality; and

(C) water supply;

(3) consistent with knowledge gained from activities carried out during 2014, collaborate with the California Department of Water Resources to install a deflection barrier at Georgiana Slough in coordination with Delta Cross Channel Gate diurnal operations to protect migrating salmonids;

(4) evaluate the combined salmonid survival in light of activities carried out pursuant to paragraphs (1) through (3) in deciding how to operate the Delta Cross Channel gates to enhance salmonid survival and water supply benefits; and

(5) not later than May 15, 2015, submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives a written report on the extent to which the gates are able to remain open.

(b) Recommendations.—After assessing the information collected under subsection (a), the Secretary of the Interior shall recommend revisions to the operation of the Delta Cross-Channel Gates, to the Central Valley Project, and to the State Water Project, including, if appropriate, any reasonable and prudent alternative contained in the biological opinion issued by the National Marine Fisheries Service on June 4, 2009, that are likely to produce water supply benefits without causing fishery jeopardy or negatively impacting water quality

. The Secretary shall also coordinate with the State Water Resources Control Board to seek consistent direction for the operation of the Delta Cross-Channel Gates under federal and state law, including Water Right Decision 1641.

## SEC. 305. FLEXIBILITY FOR EXPORT/INFLOW RATIO.

In response to the declaration of a state of drought emergency by the Governor of California or as long as 90% of the state remains in a “moderate drought” as determined by the U.S. Drought Monitor and for the period of time such a drought declaration remains in effect, the Commissioner of the Bureau of Reclamation shall continue to vary the averaging period of the Delta Export/Inflow ratio pursuant to the California State Water Resources Control Board decision D1641, approved in the March Temporary Urgency Change Order—

(1) to operate to a 35 percent Export/Inflow ratio with a 3 day averaging period on the rising limb of a Delta inflow hydrograph; and

(2) to operate to a 14 day averaging period on the falling limb of the Delta inflow hydrograph.

## SEC. 306. EMERGENCY ENVIRONMENTAL REVIEWS.

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For the period of time such that in any year that the Sacramento Valley Index is 6.5 or lower, or at the request of the State of California, and for the succeeding two years following either of those events, the Commissioner.....

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To minimize the time spent carrying out environmental reviews and to deliver water quickly that is needed to address emergency drought conditions in the State during the duration of an emergency drought declaration, the head of each applicable Federal agency shall, in carrying out this Act, consult with the Council on Environmental Quality in accordance with section 1506.11 of title 40, Code of Federal Regulations (including successor regulations), to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) during the emergency.

**SEC. 307. PRIORITIZING STATE REVOLVING FUNDS DURING DROUGHTS.**

(a) In General.—This section shall apply for each of the fiscal years during which an emergency drought declaration of the State is in effect.

(b) The Administrator of the Environmental Protection Agency, in implementing the processes and programs under the State water pollution control revolving funds established under title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) and the State drinking water treatment revolving loan funds established under section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12), shall, for those projects that are eligible to receive assistance under section 603 of the Federal Water Pollution Control Act (33 U.S.C. 1383) or section 1452(a)(2) of the Safe Drinking Water Act (42 U.S.C. 300j–12(a)(2)),

(1) issue a determination of waivers within 30 days of the conclusion of the informal public comment period pursuant to section 436(c) of title IV of division G of Public Law 113–76; and

(2) authorize, at the request of the State, 40-year financing for assistance under section 603(d)(2) of the Federal Water Pollution Control Act (33 U.S.C. 1383(d)(2)) or section 1452(f)(2) of the Safe Drinking Water Act (42 U.S.C. 300j–12(f)(2)).

(c) Effect of Section.—Nothing in this section authorizes the Administrator of the Environmental Protection Agency to modify any funding allocation, funding criteria, or other requirement relating to State water pollution control revolving funds established under title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) and the State drinking water treatment revolving loan funds established under section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12) for any other State

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**SEC. 308. INCREASED FLEXIBILITY FOR REGULAR PROJECT OPERATIONS.**

The Secretaries shall, consistent with applicable laws (including regulations)—

~~(1) to the maximum extent practicable, based on the availability of water and without causing land subsidence or violating water quality standards—~~

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(B) make available to individuals or districts who receive water from the United States under water rights settlement contracts, exchange contracts, water service or repayment contracts ~~Central Valley Project contractors a quantity of Central Valley Project surface the additional~~ water obtained from the activities carried out under subparagraph (A);

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(2) in coordination with the Secretary of Agriculture, enter into an agreement with the National Academy of Sciences to conduct a comprehensive study, to be completed not later than 1 year after the date of enactment of this Act, on the effectiveness and environmental impacts of saltcedar biological control efforts on increasing water supplies and improving riparian habitats of the Colorado River and its principal tributaries, in the State and elsewhere;

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(3) in coordination with the California Department of Water Resources and the California Department of Fish and Wildlife, implement offsite upstream projects in the Delta and upstream Sacramento River and San Joaquin basins that offset the effects on species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) due to activities carried out pursuant this Act, as determined by the Secretaries;

(4) manage reverse flow in the Old and Middle Rivers at -5,000 cfs as prescribed by the smelt biological opinion

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and the salmonids biological opinion, or any successor biological opinions, to maximize and the salmonids biological opinion, or any successor biological opinions, to maximize water supply reductions for the Central Valley Project and the State Water Project.

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Reductions in pumping to levels less negative than -5,000 cfs may be made subject to Sections 103(e)(3) and (4):

(5) as soon as practicable after the date of enactment of this Act and pursuant to existing authority available to the Secretary of the Interior, participate in, issue grants, or otherwise provide funding for pilot projects to increase water in reservoirs in regional river basins experiencing extreme, exceptional, or sustained drought that have a direct impact on the water supply of the State, including the Colorado River Basin, on the condition that any participation, grant, or funding by the Secretary of the Interior with respect to the Upper Division shall be with or to the respective State; and

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(6) use all available scientific tools to identify any changes to real-time operations of the Bureau of Reclamation, State, and local water projects that could result in the availability of additional water supplies.

SEC. 309. TEMPORARY OPERATIONAL FLEXIBILITY  
FOR FIRST FEW STORMS DURING A DROUGH  
EMERGENCY OF 2015 WATER YEAR.

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(a) Findings:

(1) During the 2014 water year, operations of the Central Valley Project and the State Water Project, the incidental take of adult Delta smelt was zero; of juvenile Delta smelt, 78 (7.7% of the incidental take limit level); of winter run chinook, 339 (1.4% of the incidental

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take level); of spring run chinook, zero; and of steelhead, 261 (8.7% of the incidental take level).

(2) The Central Valley Project and State Water Project exceeded an Old and Middle River flow of -5,000 cubic feet per second over a 14-day average for brief periods after three storm events in February and March 2014, as a result of increased pumping, but did not cause substantially increased take of smelt or salmon.

(3) Hydrological conditions in dry years, such as the 2014 water year, have not triggered water pumping restrictions pursuant to the 2008 smelt biological opinion.

(4) The Secretaries should be allowed more flexibility to increase pumping levels without causing significant risk to the listed species or weakening other environmental protections.

(5) To address California's severe drought conditions, significant groundwater withdrawals for irrigation due to lack of surface water supplies, and the depletion of water supplies in reservoirs, it is imperative that the Secretaries exercise for the duration of the existing drought emergency the flexibility provided herein to capture the maximum amount of flows resulting from storm events, and provide for the diversion of water to increase water supplies to the Central Valley Project and State Water Project so that farms, businesses, and homes in drought-stricken areas will have an opportunity to bolster their meager supplies when water is available.

~~(5)(6)~~ It is reasonable to conclude that similar conditions will exist during future drought emergencies and regulatory relief during future first few storm events must be provided.

(b) In general. For the duration of a drought emergency, consistent with avoiding jeopardy in the short-term additional adverse effects upon listed fish species beyond the range of those authorized under the Endangered Species Act and other environmental protections under subsection (e), the Secretaries shall authorize the Central Valley Project and the State Water Project, combined, to operate at levels that result in negative Old and Middle River flows at up to -7500 cubic feet per second (based on United States Geological Survey gauges on Old and Middle Rivers) daily average for up to 21 30 cumulative days after October 1, 2014, as described in subsection (c).

(c) Days of temporary operational flexibility. The temporary operational flexibility described in subsection (b) shall be authorized on days that the California Department of Water Resources determines the daily average river flow of the Sacramento River is at, or above, 17,000 cubic feet per second as measured at the Sacramento River at Freeport gauge maintained by the United States Geologic Survey.

(d) Compliance with ESA authorizations. In carrying out this section, the Secretaries may continue to impose any requirements under the smelt and salmonid biological opinions during any period of temporary operational flexibility as they determine are reasonably necessary to avoid an additional adverse effects significant negative impacts on the long-term survival of a jeopardy on listed fish species beyond the range of those authorized under the Endangered Species Act.

(e) Other environmental protections.

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(1) The Secretaries' actions under this section shall be consistent with applicable regulatory requirements under state law, including State Water Resources Control Board Decision 1641, as it may be implemented in any given year;

(2) During the first flush of sediment out of the Delta in each water year during the 2015 water year, OMR flow may be managed at rates less negative than -5000 cubic feet per second for a minimum duration to avoid movement of adult delta-Delta smelt (*Hypomesus transpacificus*) to areas in the southern Delta that would be likely to increase entrainment at Central Valley Project and State Water Project pumping plants;

(3) This section shall not have any effect affect on the the application requirements of the salmonid biological opinion from April 1 to May 31, unless the Secretary of Commerce finds that some or all of such applicable requirements may be adjusted during this time period to provide emergency water supply relief without resulting in additional adverse effects beyond those authorized under the Endangered Species Act;

(4) During operations under this section, the Commissioner of Reclamation, in coordination with the Fish and Wildlife Service, National Marine Fisheries Service, and California Department of Fish and Wildlife, shall undertake a monitoring program and other data gathering to insure incidental take levels are not exceeded, and to identify potential negative impacts and actions, if any, necessary to mitigate impacts of the temporary operational flexibility to listed species listed ; and

(5) The Commissioner is authorized to take any action, including the transfer of appropriated funds between accounts that, in the Commissioner's judgment, are necessary to mitigate the impacts of such operations as long as any such mitigation is consistent with the requirements of this section.

(f) Technical adjustments to target period. If, before temporary operational flexibility has been implemented on 21 30 cumulative days, the Secretaries operate the Central Valley Project and the State Water Project combined at levels that result in Old and Middle River flows less negative than -7500 cubic feet per second during days of temporary operational flexibility as defined in subsection (c), the duration of such operation shall not be counted toward the 21 30 consecutive-cumulative days specified in subsection (b).

(g) Emergency consultation; effect on running averages.

(1) If necessary to implement the provisions of this section, the Commissioner shall use the emergency consultation procedures under the Endangered Species Act and its implementing regulation at 50 CFR 402.05 to temporarily adjust the operating criteria under the biological opinions,

(A) solely for the 28 consecutive+ days of temporary operational flexibility—

(iA) no more than necessary to achieve the purposes of this section consistent with the environmental protections in subsections (d) and (e); and

(iiB) including, as appropriate, adjustments to ensure that the actual flow rates during the periods of temporary operational flexibility do not count toward the 5-day and 14-day running averages of tidally filtered daily Old and Middle River flow requirements under the biological opinions, or

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(B) for other adjustments to operating criteria or to take other urgent actions to address water supply shortages for the least amount of time or volume of diversion necessary as determined by the Commissioner.

(2) Following the conclusion of the ~~21-28~~ consecutive days of temporary operational flexibility, the Commissioner shall not reinitiate consultation on these adjusted operations, and no mitigation shall be required, if the effects on listed fish species of these operations under this section remain within the range of those authorized under the Endangered Species Act. ~~If the Commissioner reinitiates consultation, no mitigation measures shall be required during the pendency of the drought emergency. Any mitigation measures imposed must be based on quantitative data and required only to the extent that such data demonstrates actual harm to species.~~

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(h) Level of detail required for analysis. In articulating the determinations required under this section, the Secretaries shall fully satisfy the requirements herein but shall not be expected to provide a greater level of supporting detail for the analysis than feasible to provide within the short time frame permitted for timely decision-making in response to changing conditions in the Delta.

~~(i) Duration. This section shall expire on September 30, 2015.~~

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## SEC. 310. EXPEDITING WATER TRANSFERS.

(a) In General.—Section 3405(a) of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4709(a)) is amended—

(1) by redesignating paragraphs (1) through (3) as paragraphs (4) through (6), respectively;

(2) in the matter preceding paragraph (4) (as so designated)—

(A) in the first sentence, by striking “In order to” and inserting the following:

“(1) IN GENERAL.—In order to”; and

(B) in the second sentence, by striking “Except as provided herein” and inserting the following:

“(3) TERMS.—Except as otherwise provided in this section”; and

(3) by inserting before paragraph (3) (as so designated) the following:

“(2) EXPEDITED TRANSFER OF WATER.—The Secretary shall take all necessary actions to facilitate and expedite transfers of Central Valley Project water in accordance with—

“(A) this Act;

“(B) any other applicable provision of the reclamation laws; and

“(C) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).”;

(4) in paragraph (4) (as so designated)—

(A) in subparagraph (A), by striking “to combination” and inserting “or combination”; and

(B) by striking “3405(a)(2) of this title” each place it appears and inserting “(5)”;

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(5) in paragraph (5) (as so designated), by adding at the end the following:

“(E) The contracting district from which the water is coming, the agency, or the Secretary shall determine if a written transfer proposal is complete within 45 days after the date of submission of the proposal. If the contracting district or agency or the Secretary determines that the proposal is incomplete, the district or agency or the Secretary shall state with specificity what must be added to or revised for the proposal to be complete.”; and

(6) in paragraph (6) (as so designated), by striking “3405(a)(1)(A)-(C), (E), (G), (H), (I), (L), and (M) of this title” and inserting “(A) through (C), (E), (G), (H), (I), (L), and (M) of paragraph (4)”.

(b) Conforming Amendments.—The Central Valley Project Improvement Act (Public Law 102–575) is amended—

(1) in section 3407(c)(1) (106 Stat. 4726), by striking “3405(a)(1)(C)” and inserting “3405(a)(4)(C)”; and

(2) in section 3408(i)(1) (106 Stat. 4729), by striking “3405(a)(1) (A) and (J) of this title” and inserting “subparagraphs (A) and (J) of section 3405(a)(4)”

## SEC. 311. WARREN ACT CONTRACTS.

[To be supplied.]

## SEC. 312. ADDITIONAL WARREN ACT CONTRACTS.

(a) IN GENERAL.—Not later than 30 days after the date of the enactment of this Act, the Secretary of the Interior shall develop and offer to the Calaveras County

Water District (hereafter in this section referred to as the “CCWD”) a contract enabling the CCWD to impound and store up to 100,000 acre-feet of their Stanislaus River water rights in the New Melones Reservoir in accordance with the terms and conditions of sections 1 through 3 of the Act of February 21, 1911 (43 U.S.C. 523–525; commonly known as the “Warren Act”). This stored water may be obtained for use by CCWD at a point, or points determined convenient to the District.

(b) TERMS AND CONDITIONS.—The terms and conditions of any contract entered into under subsection (a) shall—

(1) be for a term of not less than 20 years; and

(2) expressly provide that—

(A) the CCWD may use any water impounded and stored in the New Melones Reservoir for any legal purpose under California law, including use within the boundaries of the

CCWD, transfer to and reasonable and beneficial use by a person or entity not located with

in the boundaries of CCWD, and for instream use in the Stanislaus River, the San Joaquin

River, or the Sacramento-San Joaquin River

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Delta; and

(B) any water impounded and stored by the district shall not be released or withdrawn if the end of month September storage level for New Melones Reservoir is projected to be equal to or below 300,000 acre-feet, but in such event the impounded and stored water shall be retained in the New Melones Reservoir for use by the district in the following year, subject to the same 300,000 acre-foot minimum storage requirement, and without additional payment being required.

~~[To be supplied.]~~

## TITLE IV—INCREASING WATER STORAGE

### SEC. 401. FINDINGS.

Congress finds that—

(1) the record drought conditions being experienced in the State as of the date of enactment of this Act are—

(A) expected to recur in the future; and

(B) likely to do so with increasing frequency;

(2) water storage is an indispensable and integral part of any solution to address the long-term water challenges of the State;

(3) Congress authorized relevant feasibility studies for 4 water storage projects in the State, including projects for—

(A) enlargement of Shasta Dam in Shasta County under section 2(a) of Public Law 96–375 (94 Stat. 1506), as reaffirmed under section 103(d)(1)(A)(i)(I) of Public Law 108–361 (118 Stat. 1684);

(B) enlargement of Los Vaqueros Reservoir in Contra Costa County under section 215 of Public Law 108–7 (117 Stat. 147), as reaffirmed under section 103(d)(1)(A)(i)(II) of Public Law 108–361 (118 Stat. 1684);

(C) construction of North-of-Delta Offstream Storage (Sites Reservoir) in Colusa County under section 215 of Public Law 108–7 (117 Stat. 147), as reaffirmed under section 103(d)(1)(A)(ii)(I) of Public Law 108–361 (118 Stat. 1684); and

(D) construction of the Upper San Joaquin River storage (Temperance Flat) in Fresno and Madera Counties under section 215 of Public Law 108–7 (117 Stat. 147), as reaffirmed under section 103(d)(1)(A)(ii)(II) of Public Law 108–361 (118 Stat. 1684);

(4) (A) as of the date of enactment of this Act, it has been more than 10 years since the authorization of the feasibility studies referred to in paragraph (3); but

(B) complete and final feasibility studies have not been prepared for any of those water storage projects;

(5) as of August 2014, only 2 of the 4 projects referred to in paragraph (3) have completed draft feasibility studies;



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(6) the slow pace of work on completion of the feasibility studies for those 4 water storage projects is—

(A) unjustified; and

(B) of deep concern; and

(7) there is significant public interest in, and urgency with respect to, completing all feasibility studies and environmental reviews for the water storage projects referred to in paragraph (3), given the critical need for that infrastructure to address the water challenges of the State.

**SEC. 402. CALFED STORAGE FEASIBILITY STUDIES.**

(a) In General.—Notwithstanding subparagraph (B)(i) of section 103(d)(1) of Public Law 108–361 (118 Stat. 1684), the Secretary of the Interior, acting through the Commissioner of Reclamation (referred to in this title as the “Secretary”), shall complete a final feasibility study and any other applicable environmental review documents for the project described in—

(1) subparagraph (A)(i)(I) of that section by not later than December 31, 2014;

(2) subparagraph (A)(ii)(II) of that section by not later than July 31, 2015.

(b) Environmental Reviews.—In carrying out subsection (a), the Secretary—

(1) shall ensure that—

(A) all applicable reviews, including reviews required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), are completed as expeditiously as practicable; and

(B) the shortest applicable process under that Act is used, including in the completion of—

(i) feasibility studies;

(ii) draft environmental impact statements; and

(iii) final environmental impact statements; and

(2) shall not be required to complete a draft or final environmental impact statement if the Commissioner of Reclamation determines, and the Secretary concurs, that the project fails to meet applicable Federal cost-benefit requirements or standards.

(c) Accountability.—

(1) If the Bureau of Reclamation determines that an environmental review document for the water storage projects referenced in of Section 103(d)(1) of P.L. 108-361 will not be completed according to the schedule specified in subsection (a), the Bureau shall notify the Senate Committee on Energy and Natural Resources, the Senate Appropriations Subcommittee on Energy and Water Development, [the House of Representatives Natural Resources Committee](#), and the House of Representatives Transportation and Infrastructure Committee within 14 days of the determination. The notification shall include:

(A) An explanation of the delay;

(B) The anticipated length of the delay and the revised completion date;

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(C) The steps that the Bureau will take to mitigate the delay, including, but not limited to, a request to reprogram existing funds appropriated to the Bureau to meet the revised completion deadline.

(2) The Bureau of Reclamation shall carry out the procedures in subsection (a) for each subsequent delay beyond the revised completion deadline.

(1) IN GENERAL.—[Subject to paragraph (2),] if the Secretary fails to complete a feasibility study or environmental review required for any water storage project referred to in subsection (a) in accordance with the schedule specified in that subsection, the amounts made available to the Policy and Administration Account of the Bureau of Reclamation for fiscal year 2015 shall be withheld and reduced by an amount equal to the product obtained by multiplying—

(A) \$20,000; and

(B) the number of weeks during the period beginning on the applicable deadline for completion of the feasibility study or environmental review and ending on the date on which the final feasibility study or environmental review is completed.

(2) DISTRIBUTION.—If the relevant feasibility study or environmental review is delayed beyond the schedule specified in subsection (a), the percentage of withheld funds that shall be released and made available to the Bureau of Reclamation on completion of the feasibility study or environmental review document shall be—

(A) in the case of a delay the duration of which is less than [or equal to] 90 days, 100 percent of the withheld funds;

(B) in the case of a delay the duration of which is more than 90 days but less than [or equal to] 180 days, 75 percent of the withheld funds;

(C) in the case of a delay the duration of which is more than 180 days but less than [or equal to] 270 days, 50 percent of the withheld funds;

(D) in the case of a delay the duration of which is more than 270 days but less than [or equal to] 1 year, 25 percent of the withheld funds; and

(E) in the case of a delay the duration of which is more than 1 year, 0 percent of the withheld funds.

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**SEC. 403. WATER STORAGE PROJECT CONSTRUCTION.**

(a) The Secretary, acting through the Commissioner of the Bureau of Reclamation, may partner or enter into an agreement on the water storage projects identified in section 103(d)(1) of the Water Supply Reliability and Environmental Improvement Act (Public Law 108-361) (and Acts supplemental and amendatory to the Act) with local joint powers authorities formed pursuant to State law by irrigation districts and other local water districts and local governments within the applicable hydrologic region, to advance those projects

(b) [PLACEHOLDER FOR AUTHORIZATION ISSUE]

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Commented [A34]: As for financing – what if we allowed Treasury to invest money from the reclamation fund (similar to how SSA does it) and take that surplus money and put it into a “storage trust fund”?

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SEC. 404 . DAM SAFETY PROJECTS WITH INCREASED STORAGE COMPONENT.

(a) Additional Project Benefits.—The Reclamation Safety of Dams Act of 1978 is amended—

(1) in section 3 (43 U.S.C. 507), by striking “Construction” and inserting “Except as provided in section 5B, construction”; and

(2) by inserting after section 5A (43 U.S.C. 509a) the following:

“SEC. 5B. ADDITIONAL PROJECT BENEFITS.

“(a) In General.—Notwithstanding section 3, if the Secretary, in the judgment of the Secretary, makes a determination described in subsection (b), the Secretary is authorized to develop any additional project benefit—

“(1) through the construction of new or supplementary works on a project in conjunction with the activities carried out by the Secretary pursuant to section 2; and

“(2) subject to the conditions described in the feasibility study relating to the project.

“(b) Description of Determination.—A determination referred to in subsection (a) is a determination by the Secretary that—

“(1) an additional project benefit, including but not limited to additional conservation storage capacity, is—

“(A) necessary; and

“(B) in the interests of the United States; and

“(2) the project benefit proposed to be carried out is—

“(A) feasible; and

“(B) not inconsistent with the purposes of this Act.

“(c) Requirements.—The costs associated with developing an additional project benefit under this section shall be—

“(1) allocated to entity or entities benefitting from the additional conservation storage capacity, subject to agreement between the state and federal funding agencies on such allocations; and

“(2) repaid in accordance with all applicable provisions of Federal reclamation law (the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act (43 U.S.C. 371 et seq.).”.

(b) San Luis Reservoir Expansion.—Section 103(f)(1)(A) of Public Law 108–361 (118 Stat. 1694) is amended—

(1) by striking “Funds” and inserting the following:

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“(i) IN GENERAL.—Funds”; and  
(2) by adding at the end the following:

“(ii) ENVIRONMENTAL REVIEWS AND FEASIBILITY STUDY.—The Commissioner of Reclamation shall submit to Congress—

“(I) an expansion draft environmental impact statement and feasibility study relating to the San Luis Reservoir by not later than April 1, 2016; and

“(II) a final environmental impact statement relating to the San Luis Reservoir by not later than December 31, 2016.”.

~~SEC. 406. UPDATING WATER OPERATIONS MANUALS  
FOR NON FEDERAL PROJECTS.~~

(a) Cooperative Agreements.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, to determine the feasibility of an agreement for long-term use of an existing or expanded non-Federal storage or conveyance facility to augment Federal water supply, ecosystem, and operational flexibility benefits, the Secretary shall offer to enter into cooperative agreements with non-Federal entities to provide replacement water supplies for drought relief for—

(A) contractors of the Central Valley Project (as defined in section 3403 of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706));

(B) units of the National Wildlife Refuge System;

(C) State wildlife areas; and

(D) private wetland areas.

(2) REQUIREMENTS.—A cooperative agreement under this subsection shall—

(A) include the purchase of storage capacity in non-Federal facilities from willing sellers; and

(B) provide reimbursement for the temporary use of available capacity in existing above-ground, off-stream storage and associated conveyance facilities owned by local water agencies.

(b) Report.—Not later than 2 years after the date of enactment of this Act, the Secretary shall submit to the Chief of the National Wildlife Refuge System and contractors of the Central Valley Project a report describing the feasibility of the agreement for long-term use described in subsection (a)(1).

TITLE V—WATER RIGHTS PROTECTIONS

SEC. 501. PROTECTIONS FOR STATE WATER PROJECT  
CONTRACTORS.

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If, as a result of the application of this Act, the California Department of Fish and Wildlife:

(a) revokes the consistency determinations pursuant to California Fish and Game Code section 2080.1 that are applicable to the State Water Project;

(b) amends or issues one or more ~~a new~~ consistency determinations pursuant to California Fish and Game Code section 2080.1 in a manner that results in reduced water supply to the State Water Project as compared with the water supply available under the Smelt Biological Opinion and the Salmonid Biological Opinion; or

~~(c)~~ requires take authorization under section 2081 for operation of the State Water Project in a manner that results in reduced water supply to the State Water Project as compared with the water supply available under the Smelt Biological Opinion and the Salmonid Biological Opinion, and as a consequence, there is an increase in Central Valley Project yield, any such increase shall be shared equally with the State Water Project. Prior to implementing this Act, the Secretary shall request written notification from the California Department of Fish and Wildlife indicating whether implementation of this Act will affect the status of consistency determinations for operation of the State Water Project.

~~(a)~~ The Secretary of the Interior (Secretary) is directed in the operation of the Central Valley Project (CVP) to adhere to California's water rights laws governing water rights priorities ~~by honoring water rights senior to those held by the United States for operation of the CVP, regardless of the source of priority,~~ including any appropriative water rights initiated prior to December 19, 1914, as well as water rights and other priorities perfected or to be perfected pursuant to California Water Code Part 2 of Division 2, Article 1.7 (commencing with section 1215 of Chapter 1 of Part 2 of Division 2, Sections 10505, 10505.5, 11128, 11460, 11461, 11462 and 11463, and Sections 12200 to 12220, inclusive).

~~(b) Any action that requires that diversions be bypassed or that involves the release of water from any CVP water storage facility taken by the Secretary or the Secretary of the Department of Commerce pursuant to Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531, et seq.) shall be applied in a manner that is consistent with water rights priorities established by California law.~~

(a) The Secretary shall ensure that, except as otherwise provided for in a water service or repayment contract, actions taken in compliance with legal obligations imposed pursuant to or as a result of this Act, including, but not limited to, such actions under the Endangered Species Act of 1973 (16 U.S.C. § 1531 et seq.) as amended and other federal laws, shall not result in the involuntary reduction of water supply to individuals or districts who receive water from the State Water Project or from the United States under water rights settlement contracts, exchange contracts, water service or repayment contracts, cause redirected adverse water supply or fiscal impacts to those within the Sacramento River Watershed or the State Water Project service area.

(b) To the extent that costs are incurred solely pursuant to or as a result of this Act and would not otherwise have been incurred by any entity or public or local agency or subdivision of the State of California, such costs shall not be borne by any such entity, agency, or subdivision of the State of California, unless such costs are incurred on a voluntary basis.

~~(c)~~ Except as provided in this Act, nothing in this Act shall modify or amend the rights and obligations of the parties to any existing water service, repayment, settlement, purchase, or exchange contract with the United States, including the obligation to satisfy

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exchange contracts and settlement contracts prior to allocation of Central Valley Project yield.

SEC. 504. EFFECT ON STATE LAWS.

Nothing in this Act preempts any State law in effect on the date of enactment of this Act, including area of origin and other water rights protections or modifies any existing obligation of the United States under Federal reclamation law to operate the Central Valley Project in conformity with State law including established water rights priorities.

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TITLE VI—MISCELLANEOUS

SEC. 601. AUTHORIZED SERVICE AREA.

(a) In General.—The authorized service area of the Central Valley Project authorized under the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706) shall include the area within the boundaries of the Kettleman City Community Services District, California, as in existence on the date of enactment of this Act.

(b) Long-term Contract.—

(1) IN GENERAL.—Notwithstanding the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706) and subject to paragraph (2), the Secretary of the Interior, in accordance with the reclamation laws, shall enter into a long-term contract with the Kettleman City Community Services District, California, under terms and conditions mutually agreeable to the parties, for the delivery of up to 900 acre-feet of Central Valley Project water for municipal and industrial use.

(2) LIMITATION.—Central Valley Project water deliveries authorized under the contract entered into under paragraph (1) shall be limited to the minimal quantity necessary to meet the immediate needs of the Kettleman City Community Services District, California, in the event that local supplies or State Water Project allocations are insufficient to meet those needs.

(c) Permit.—The Secretary shall apply for a permit with the State for a joint place of use for water deliveries authorized under the contract entered into under subsection (b) with respect to the expanded service area under subsection (a), consistent with State law.

(d) Additional Costs.—If any additional infrastructure, water treatment, or related costs are needed to implement this section, those costs shall be the responsibility of the non-Federal entity.

SEC. 602. RESCHEDULED WATER.

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(a) Report; Advisory Board.—Section 3407 of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4726) is amended by adding at the end the following:

“(g) Report on Expenditure of Funds.—

“(1) IN GENERAL.—For each fiscal year, the Secretary, in consultation with the Advisory Board, shall submit to Congress a plan for the expenditure of all of the funds deposited into



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the Restoration Fund during the preceding fiscal year.

“(2) CONTENTS.—The plan shall include an analysis of the cost-effectiveness of each expenditure.

“(h) Advisory Board.—

“(1) ESTABLISHMENT.—There is established the Restoration Fund Advisory Board (referred to in this section as the ‘Advisory Board’), which shall be composed of 154 members appointed by the Secretary.

“(2) MEMBERSHIP.—

“(A) IN GENERAL.—The Secretary shall appoint members to the Advisory Board that represent the various Central Valley Project stakeholders, of whom—

“(i) 3 members shall be agricultural users of the Central Valley Project;

“(ii) 2 members shall be municipal and industrial users of the Central Valley Project;

“(iii) 3 members shall be power contractors of the Central Valley Project;

“(iv) 1 member shall be a representative of a federal wildlife refuge that contracts for Central Valley Project water supplies with the Bureau of Reclamation;

“(v) 1 member shall represent nongovernmental organizations involved in the protection and restoration of California fisheries;

“(vi) 1 member shall represent the commercial fishing industry;

“(vii) 1 member shall represent the recreational fishing industry; and

“(viii) 2 members shall be appointed at the discretion of the Secretary.

“(ix) 1 member shall be an economist

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“(B) OBSERVER.—The Secretary and the Secretary of Commerce may each designate a representative to act as an observer of the Advisory Board.

“(C) CHAIRMAN.—The Secretary shall appoint 1 of the members described in subparagraph (A) to serve as Chairman of the Advisory Board.

“(3) TERMS.—The term of each member of the Advisory Board shall be 4 years.

“(4) DATE OF APPOINTMENTS.—The appointment of a member of the Panel shall be made not later than—

(A) the date that is 120 days after the date of enactment of this Act; or

(B) in the case of a vacancy on the Panel described in subsection (c)(2), the date that is 120 days after the date on which the vacancy occurs.

“(5) Vacancies.—

(A) IN GENERAL.—A vacancy on the Panel shall be filled in the manner in which the original appointment was made and shall be subject to any conditions that applied with respect to the original appointment.

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(B) FILLING UNEXPIRED TERM.—An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

(C) EXPIRATION OF TERMS.—The term of any member shall not expire before the date on which the successor of the member takes office.

“(6) Removal —A Member of the Panel may be removed from office by the Secretary of the Interior.

“(7) Federal Advisory Committee Act. —The Panel shall not be subject to the requirements of the Federal Advisory Committee Act.

“(8) DUTIES.—The duties of the Advisory Board are—

“(A) to meet not less frequently than semiannually to develop and make recommendations to the Secretary regarding priorities and spending levels on projects and programs carried out under this title;

“(B) to ensure that any advice given or recommendation made by the Advisory Board reflects the independent judgment of the Advisory Board;

“(C) not later than December 31, 2015, and annually thereafter, to submit to the Secretary and Congress the recommendations under subparagraph (A); and

“(D) not later than December 31, 2015, and biennially thereafter, to submit to Congress a report that details the progress made in achieving the actions required under section 3406.

“(9) ADMINISTRATION.—With the consent of the appropriate agency head, the Advisory Board may use the facilities and services of any Federal agency.”

“(10) Cooperation and Assistance.—

(A) Upon request of the Panel Chairperson for information or assistance to facilitate the carrying out of this section, the Secretary of the Interior shall promptly provide such information, unless otherwise prohibited by law.

(B) Space and Assistance.—The Secretary of the Interior shall provide the Panel with appropriate and adequate office space, together with such equipment, office supplies, and communications facilities and services as may be necessary for the operation of the Panel, and shall provide necessary maintenance services for such offices and the equipment and facilities located therein.

**SEC. 603. WATER OPERATIONS REVIEW PANEL.**

(a) Establishment.—There is established a panel to be known as the “Water Operations Review Panel”.

(b) Membership.—

(1) COMPOSITION.—The Panel shall be composed of 5-6 members with demonstrated expert knowledge of the Central Valley Project and State Water Project and their respective operations, appointed by the Secretary of the Interior, in consultation with the Secretary of Commerce and the congressional committees identified in (f)(1)(A) of this section, of whom—

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(A) 1 member shall be a person who possesses expert knowledge of methods generally accepted by the scientific community, who shall be the Chairperson of the Panel;

(B) 2 members shall be fisheries biologists, of whom—

(i) 1 member shall have expertise in Delta smelt; and

(ii) 1 member shall have expertise in salmonids; and

~~(C)~~ ~~(C)~~ 2 members shall be engineers with substantial expertise in Central Valley Project and State Water Project water operations.

~~(C)~~ ~~(D)~~ 1 member shall be an economist {1 member shall have expertise in the economic impacts of changes to water operations.}

(2) ~~RECOMMENDATIONS.~~—~~The Secretary of the Interior shall consider the recommendations~~

~~(3)~~ PROHIBITION ON FEDERAL OR STATE GOVERNMENT EMPLOYMENT.—For at least three years prior to appointment to the Panel, an individual appointed to the Panel under paragraph (1) shall not have been an employee of the Federal Government or the State of California.

~~(4)~~ DATE OF APPOINTMENTS.—The appointment of a member of the Panel shall be made not later than—

(A) the date that is 120 days after the date of enactment of this Act; or

(B) in the case of a vacancy on the Panel described in subsection (c)(2), the date that is 120 days after the date on which the vacancy occurs.

(c) Term; Vacancies.—

(1) TERMS.—A member of the Panel shall be appointed for a term of 3 years, except that, with respect to the members first appointed under this section—

(A) the Chairperson shall be appointed for a term of 3 years;

(B) of the members appointed under subsection (b)(1)(B)—

(i) 1 member shall be appointed for a term of 1 year; and

(iii) 1 member shall be appointed for a term of 2 years;

(C) of the members appointed under subsection (b)(1)(C)—

(i) 1 member shall be appointed for a term of 1 year; and

(ii) 1 member shall be appointed for a term of 2 years.

(2) VACANCIES.—

(A) IN GENERAL.—A vacancy on the Panel shall be filled in the manner in which the original appointment was made and shall be subject to any conditions that applied with respect to the original appointment.

(B) FILLING UNEXPIRED TERM.—An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

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(d) Removal. —A Member of the Panel may be removed from office by the Secretary of the Interior.

(e) Federal Advisory Committee Act. —The Panel shall not be subject to the requirements of the Federal Advisory Committee Act.

(f) Duties.

(1) Annual Assessment and Report on Agencies' Operational Decisions under this Act.—

(A) IN GENERAL.—No later than November 30, 2015, and annually no later than November 30 thereafter, the Panel shall report an assessment of the agencies' operational decisions under this Act and recommendations for the prospective implementation of this Act to the following Congressional committees:

(i) Senate Committee on Environment and Public Works;

(ii) Senate Appropriations Subcommittee on Energy and Water Development;

(iii) House Natural Resources Committee; and

(iv) House Appropriations Subcommittee on Energy and Water Development.

(B) RETROSPECTIVE ASSESSMENT.—In making the retrospective assessment under paragraph (1), the Panel shall review and evaluate restrictions imposed under the smelt biological opinion and the salmonid biological opinion, and successor opinions, on operations of the Central Valley Project and State Water Project, the Director of the Fish and Wildlife Service, Administrator of NOAA Fisheries, and Commissioner of Reclamation's —

(i) to determine the efficacy of those restrictions for the purpose of protecting listed species; and decisions in implementing this Act and other Federal laws applicable to the operations of the Central Valley Project and the State Water Project;

(ii) compliance with the Endangered Species Act in relation to operations of the Central Valley Project and the State Water Project; and

(C) PROSPECTIVE RECOMMENDATIONS.—The Panel shall make recommendations for prospective actions and potential actions warranting further study to better achieve the purposes of this Act and the Endangered Species Act as applied to the operations of the Central Valley Project and the State Water Project, including proposals—

(i) that in combination, both increase the survival of listed species and increase water supplies for the Central Valley Project and the State Water Project;

(ii) to increase the survival of listed fish species with little to no adverse effects on water supplies for the Central Valley Project and the State Water Project that would result from taking the specific proposed action recommended;

(iii) to increase such water supplies with little to no adverse effects on the survival of listed fish species; and

(iv) that respond to the annual Delta Science Program Independent Review Panel reports on the Long-term Operations Opinions.

(2) Five Year Assessment on Effectiveness of Provisions of Act and Recommended

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Legislative Changes.

(g) Cooperation and Assistance.—

(1) Upon request of the Panel Chairperson for information or assistance to facilitate the carrying out of this section, the Secretary of Commerce and the Secretary of the Interior shall promptly provide such information, unless otherwise prohibited by law.

(2) Space and Assistance.—The Secretary of the Interior shall provide the Panel with appropriate and adequate office space, together with such equipment, office supplies, and communications facilities and services as may be necessary for the operation of the Panel, and shall provide necessary maintenance services for such offices and the equipment and facilities located therein.

~~SEC. 6067056. CONTINGENCY IN EVENT OF~~  
~~CONTINUING RESOLUTION FOR FISCAL YEAR 2015.~~  
~~Sec. 604. WATER SUPPLY ACCOUNTING.~~

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All Central Valley Project water, except Central Valley Project water released from the Friant Division pursuant to the San Joaquin River Restoration Settlement Act (Public Law 111-11) and water released pursuant to the December 2000 Trinity River Mainstem Fishery Restoration Record of Decision, used to implement an action undertaken for a fishery beneficial purpose that was not imposed by terms and conditions existing in licenses, permits, and other agreements pertaining to the Central Valley Project under applicable State or Federal law existing on October 30, 1992, shall be credited to the quantity of Central Valley Project yield dedicated and managed under this section; provided, that nothing herein shall affect the Secretary's duty to comply with any otherwise lawful requirement imposed on operations of the Central Valley Project under any provision of federal or state law.

Sec. 605 . IMPLEMENTATION OF WATER REPLACEMENT PLAN.

Not later than October 1, 2015, the Secretary shall update and implement the plan required by Section 3408(j) of Title 34 of Public Law 102-575. In carrying out this subsection, the Secretary shall, in accordance with any other provision of Federal reclamation law, the National Environmental Policy Act of 1969, and the 1986 Coordinated Operating Agreement (Public Law 99-546), coordinate with the State of California to minimize any adverse effects. The Secretary shall provide reports to the Congress annually describing the progress of implementing the plan required by Section 3408(j) of Title 34 of Public Law 102-575.

Sec. 606 . RESTORATION FUND.

Water service and repayment contractors that receive water from the Delta Division or the San Luis Unit of the Central Valley Project shall be assessed, in addition to all other payments

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collected pursuant to section 3407 of the Central Valley Project Improvement Act (Public Law 102-575; 106 Stat. 4 ), a per acre-foot surcharge, equal to 50% of the annual Restoration fund payments, for all Project water delivered during any year in which the allocation to such contractors is 50% to 74% and a per acre-foot surcharge, equal to 100% of the annual Restoration fund payments, delivered during any year in which the allocation to such contractors is 75% or greater, to be covered into the Restoration Fund.

Commented [A44]: We should debate this issue and determine its effectiveness in delivering more water.

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**Sec. 607. NATURAL AND ARTIFICIALLY SPAWNED SPECIES.**

After the date of the enactment of this title, and regardless of the date of listing, the Secretaries of the Interior and Commerce shall not distinguish between natural-spawned and hatchery-spawned or otherwise artificially propagated strains of a species in making any determination under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) that relates to any anadromous fish species present in the Sacramento and San Joaquin Rivers or their tributaries and ascend those rivers and their tributaries to reproduce after maturing in San Francisco Bay or the Pacific Ocean.

**Sec. 608. AMENDMENT TO PURPOSES**

Section 3402 of the Central Valley Project Improvement Act (106 Stat. 4706) is amended—

(1) in subsection (f), by striking the period at the end; and

(2) by adding at the end the following:

“(g) to ensure that water dedicated to fish and wildlife purposes by this title is replaced and provided to Central Valley Project water contractors by December 31, 2018, at the lowest cost reasonably achievable; and

“(h) to facilitate and expedite water transfers in accordance with this Act.”.

**Sec. 609. AMENDMENT TO DEFINITION**

Section 3403 of the Central Valley Project Improvement Act (106 Stat. 4707) is amended—

(1) by amending subsection (a) to read as follows:

“(a) the term ‘anadromous fish’ means those native stocks of salmon (including steelhead) and sturgeon that, as of October 30, 1992, were present in the Sacramento and San Joaquin Rivers and their tributaries and ascend those rivers

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and their tributaries to reproduce after maturing in San Francisco Bay or the Pacific Ocean;”;

(2) in subsection (l), by striking “and,”

(3) in subsection (m), by striking the period and inserting “; and”, and

(4) by adding at the end the following:

“(n) the term ‘reasonable flows’ means water flows capable of being maintained taking into account competing consumptive uses of water and economic, environmental, and social factors.”.

## **TITLE VII. WESTERN WATER.**

### **Sec. 701. Repayment Contracts Language.**

### **Sec. 702. WRDA Language**

### **Sec. 703. MAP-21 Language**

#### **(a) ESTABLISHMENT.—**

(1) IN GENERAL.—The Secretary shall carry out a water infrastructure project delivery program (referred to in this section as the “program”).

#### **(2) ASSUMPTION OF RESPONSIBILITY.—**

(A) IN GENERAL.—Subject to the other provisions of this section, with the written agreement of the Secretary and a State, which may be in the form of a memorandum of understanding, the Secretary may assign, and the State may assume, the responsibilities of the Secretary with respect to one or more eligible water infrastructure projects described in subparagraph (B) within the State under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(B) ELIGIBLE WATER INFRASTRUCTURE PROJECTS.—In this section the term “eligible water infrastructure projects” means projects for which a non-Federal entity has lead responsibility for approving the overall project, including projects for which federal agency permitting is required or some federal funding is provided.

(C) ADDITIONAL RESPONSIBILITY.—If a State assumes responsibility under subparagraph (A)—

(i) the Secretary may assign to the State, and the State may assume, all or part of the responsibilities of the Secretary for environmental review,

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consultation, or other action required under any Federal environmental law pertaining to the review or approval of a specific project; but (ii) at the request of the State, the Secretary may also assign to the State, and the State may assume, the responsibilities of the Secretary with respect to 1 or more eligible water infrastructure projects within the State under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(D) PROCEDURAL AND SUBSTANTIVE REQUIREMENTS.—A State shall assume responsibility under this section subject to the same procedural and substantive requirements as would apply if that responsibility were carried out by the Secretary.

(E) FEDERAL RESPONSIBILITY.—Any responsibility of the Secretary not explicitly assumed by the State by written agreement under this section shall remain the responsibility of the Secretary.

(F) NO EFFECT ON AUTHORITY.—Nothing in this section preempts or interferes with any power, jurisdiction, responsibility, or authority of an agency, other than the Department of the Interior, under applicable law (including regulations) with respect to a project.

(G) PRESERVATION OF FLEXIBILITY.—The Secretary may not require a State, as a condition of participation in the program, to forego project delivery methods that are otherwise permissible for projects.

(b) STATE PARTICIPATION.—

(1) PARTICIPATING STATES. — California is eligible to participate in the program.

(2) APPLICATION.—Not later than 270 days after the date of enactment, the Secretary shall amend, as appropriate, regulations that establish requirements relating to information required to be contained in an application of a State to participate in the program, including, at a minimum—

(A) the projects or classes of projects for which the State anticipates exercising the authority that may be granted under the program;

(B) verification of the financial resources necessary to carry out the authority that may be granted under the program; and

(C) evidence of the notice and solicitation of public comment by the State relating to participation of the State in the program, including copies of comments received from that solicitation.

(3) PUBLIC NOTICE.—

(A) IN GENERAL.—The State that submits an application under this subsection shall give notice of the intent of the State to participate in the program not later than 30 days before the date of submission of the application.

(B) METHOD OF NOTICE AND SOLICITATION.—The State shall provide notice and solicit public comment under this paragraph by publishing the complete application of the State in accordance with the appropriate public notice law of the state.

(4) SELECTION CRITERIA.—The Secretary may approve the application of a State under this section only if—

(A) the regulatory requirements under paragraph (2) have been met;

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(B) the Secretary determines that the State has the capability, including financial and personnel, to assume the responsibility; and

(C) the head of the State agency having primary jurisdiction over water infrastructure matters enters into a written agreement with the Secretary described in subsection (c).

(5) OTHER FEDERAL AGENCY VIEWS.—If a State applies to assume a responsibility of the Secretary that would have required the Secretary to consult with another Federal agency, the Secretary shall solicit the views of the Federal agency before approving the application.

(c) WRITTEN AGREEMENT.—A written agreement under this section shall—

(1) be executed by the Governor or the top ranking water infrastructure official in the State who is charged with responsibility for water infrastructure construction;

(2) be in such form as the Secretary may prescribe;

(3) provide that the State—

(A) agrees to assume all or part of the responsibilities of the Secretary described in subsection (a);

(B) expressly consents, on behalf of the State, to accept the jurisdiction of the Federal courts for the compliance, discharge, and enforcement of any responsibility of the Secretary assumed by the State;

(C) certifies that State laws (including regulations) are in effect that authorize the State to take the actions necessary to carry out the responsibilities being assumed; and

(D) agrees to maintain the financial resources necessary to carry out the responsibilities being assumed;

(4) require the State to provide to the Secretary any information that the Secretary considers necessary to ensure that the State is adequately carrying out the responsibilities assigned to the State;

(5) have a term of not more than 5 years; and

(6) be renewable.

(d) JURISDICTION.—

(1) IN GENERAL.—The United States district courts shall have exclusive jurisdiction over any civil action against a State for failure to carry out any responsibility of the State under this section.

(2) LEGAL STANDARDS AND REQUIREMENTS.—A civil action under paragraph (1) shall be governed by the legal standards and requirements that would apply in such a civil action against the Secretary had the Secretary taken the actions in question.

(3) INTERVENTION.—The Secretary shall have the right to intervene in any action described in paragraph (1).

(e) EFFECT OF ASSUMPTION OF RESPONSIBILITY.—A State that assumes responsibility under subsection (a)(2) shall be solely responsible and solely liable for carrying out, in lieu of the Secretary, the responsibilities assumed under subsection (a)(2), until the program is terminated as provided in subsection (j).

(f) LIMITATIONS ON AGREEMENTS.—Nothing in this section permits a State to assume any rulemaking authority of the Secretary under any Federal law.

(g) AUDITS.—



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(1) IN GENERAL.—To ensure compliance by a State with any agreement of the State under subsection (c) (including compliance by the State with all Federal laws for which responsibility is assumed under subsection (a)(2)), for each State participating in the program under this section, the Secretary shall conduct—

(A) semiannual audits during each of the first 2 years of State participation; and

(B) annual audits during of the third and fourth years of State participation.

(2) PUBLIC AVAILABILITY AND COMMENT.—

(A) IN GENERAL.—An audit conducted under paragraph (1) shall be provided to the public for comment.

(B) RESPONSE.—Not later than 60 days after the date on which the period for public comment ends, the Secretary shall respond to public comments received under subparagraph (A).

(h) MONITORING. — After the fourth year of the participation of a State in the program, the Secretary shall monitor compliance by the State with the written agreement, including the provision by the State of financial resources to carry out the written agreement.

(j) TERMINATION. —

(1) TERMINATION BY SECRETARY.—The Secretary may terminate the participation of any State in the program if—

(A) the Secretary determines that the State is not adequately carrying out the responsibilities assigned to the State;

(B) the Secretary provides to the State—

(i) notification of the determination of noncompliance; and

(ii) a period of at least 30 days during which to take such corrective action as the Secretary determines is necessary to comply with the applicable agreement; and

(C) the State, after the notification and period provided under subparagraph (B), fails to take satisfactory corrective action, as determined by Secretary.

(2) TERMINATION BY THE STATE. — The State may terminate the participation of the State in the program at any time by providing to the Secretary a notice by not later than the date that is 90 days before the date of termination, and subject to such terms and conditions as the Secretary may provide.

Sec. 704. OTHER STORAGE FEASIBILITY STUDIES.

SEC. xx. DEFINITIONS.

In this Act:

(1) SECRETARY- The term 'Secretary' means the Secretary of the Interior.

(2) BUREAU- The term 'Bureau' means the Bureau of Reclamation.

(3) QUALIFYING PROJECTS- The term 'qualifying projects' means new surface water storage projects constructed on lands administered by the Department of the Interior or the Department of Agriculture, exclusive of any easement, right-of-way, lease, or any private holding.

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(4) COOPERATING AGENCIES- The term 'cooperating agency' means a Federal agency with jurisdiction over a review, analysis, opinion, statement, permit, license, or other approval or decision required for a qualifying project under applicable Federal laws and regulations, or a State agency subject to section 3(c).

**SEC. xx. ESTABLISHMENT OF LEAD AGENCY AND COOPERATING AGENCIES.**

(a) Establishment of Lead Agency- The Bureau of Reclamation is established as the lead agency for purposes of coordinating all reviews, analyses, opinions, statements, permits, licenses, or other approvals or decisions required under Federal law to construct qualifying projects.

(b) Identification and Establishment of Cooperating Agencies- The Commissioner of the Bureau shall--

(1) identify, as early as practicable upon receipt of an application for a qualifying project, any Federal agency that may have jurisdiction over a review, analysis, opinion, statement, permit, license, approval, or decision required for a qualifying project under applicable Federal laws and regulations; and

(2) notify any such agency, within a reasonable timeframe, that the agency has been designated as a cooperating agency in regards to the qualifying project unless that agency responds to the Bureau in writing, within a timeframe set forth by the Bureau, notifying the Bureau that the agency--

(A) has no jurisdiction or authority with respect to the qualifying project;

(B) has no expertise or information relevant to the qualifying project or any review, analysis, opinion, statement, permit, license, or other approval or decision associated therewith; or

(C) does not intend to submit comments on the qualifying project or conduct any review of such a project or make any decision with respect to such project in a manner other than in cooperation with the Bureau.

(c) State Authority- A State in which a qualifying project is being considered may choose, consistent with State law--

(1) to participate as a cooperating agency; and

(2) to make subject to the processes of this Act all State agencies that--

(A) have jurisdiction over the qualifying project;

(B) are required to conduct or issue a review, analysis, or opinion for the qualifying project; or

(C) are required to make a determination on issuing a permit, license, or approval for the water resource project.

**SEC. xx. BUREAU RESPONSIBILITIES.**

(a) In General- The principal responsibilities of the Bureau under this Act are to--

(1) serve as the point of contact for applicants, State agencies, Indian tribes, and others regarding proposed projects;

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- (2) coordinate preparation of unified environmental documentation that will serve as the basis for all Federal decisions necessary to authorize the use of Federal lands for qualifying projects; and  
(3) coordinate all Federal agency reviews necessary for project development and construction of qualifying projects.

(b) Coordination Process- The Bureau shall have the following coordination responsibilities:

(1) PRE-APPLICATION COORDINATION- Notify cooperating agencies of proposed qualifying projects not later than 30 days after receipt of a proposal and facilitate a preapplication meeting for prospective applicants, relevant Federal and State agencies, and Indian tribes to--

(A) explain applicable processes, data requirements, and applicant submissions necessary to complete the required Federal agency reviews within the time frame established; and

(B) establish the schedule for the qualifying project.

(2) CONSULTATION WITH COOPERATING AGENCIES- Consult with the cooperating agencies throughout the Federal agency review process, identify and obtain relevant data in a timely manner, and set necessary deadlines for cooperating agencies.

(3) SCHEDULE- Work with the qualifying project applicant and cooperating agencies to establish a project schedule. In establishing the schedule, the Bureau shall consider, among other factors--

(A) the responsibilities of cooperating agencies under applicable laws and regulations;

(B) the resources available to the cooperating agencies and the non-Federal qualifying project sponsor, as applicable;

(C) the overall size and complexity of the qualifying project;

(D) the overall schedule for and cost of the qualifying project; and

(E) the sensitivity of the natural and historic resources that may be affected by the qualifying project.

(4) ENVIRONMENTAL COMPLIANCE- Prepare a unified environmental review document for each qualifying project application, incorporating a single environmental record on which all cooperating agencies with authority to issue approvals for a given qualifying project shall base project approval decisions. Help ensure that cooperating agencies make necessary decisions, within their respective authorities, regarding Federal approvals in accordance with the following timelines:

(A) Not later than one year after acceptance of a completed project application when an environmental assessment and finding of no significant impact is determined to be the appropriate level of review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(B) Not later than one year and 30 days after the close of the public comment period for a draft environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), when an environmental impact statement is required under the same.

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(5) CONSOLIDATED ADMINISTRATIVE RECORD- Maintain a consolidated administrative record of the information assembled and used by the cooperating agencies as the basis for agency decisions.

(6) PROJECT DATA RECORDS- To the extent practicable and consistent with Federal law, ensure that all project data is submitted and maintained in generally accessible electronic format, compile, and where authorized under existing law, make available such project data to cooperating agencies, the qualifying project applicant, and to the public.

(7) PROJECT MANAGER- Appoint a project manager for each qualifying project. The project manager shall have authority to oversee the project and to facilitate the issuance of the relevant final authorizing documents, and shall be responsible for ensuring fulfillment of all Bureau responsibilities set forth in this section and all cooperating agency responsibilities under section 5.

**SEC. xx. COOPERATING AGENCY RESPONSIBILITIES.**

(a) Adherence to Bureau Schedule- Upon notification of an application for a qualifying project, all cooperating agencies shall submit to the Bureau a timeframe under which the cooperating agency reasonably considers it will be able to complete its authorizing responsibilities. The Bureau shall use the timeframe submitted under this subsection to establish the project schedule under section 4, and the cooperating agencies shall adhere to the project schedule established by the Bureau.

(b) Environmental Record- Cooperating agencies shall submit to the Bureau all environmental review material produced or compiled in the course of carrying out activities required under Federal law consistent with the project schedule established by the Bureau.

(c) Data Submission- To the extent practicable and consistent with Federal law, the cooperating agencies shall submit all relevant project data to the Bureau in a generally accessible electronic format subject to the project schedule set forth by the Bureau.

**SEC. xx. FUNDING TO PROCESS PERMITS.**

(a) In General- The Secretary, after public notice in accordance with the Administrative Procedures Act (5 U.S.C. 553), may accept and expend funds contributed by a non-Federal public entity to expedite the evaluation of a permit of that entity related to a qualifying project or activity for a public purpose under the jurisdiction of the Department of the Interior.

(b) Effect on Permitting-

(1) IN GENERAL- In carrying out this section, the Secretary shall ensure that the use of funds accepted under subsection (a) will not impact impartial decisionmaking with respect to permits, either substantively or procedurally.

(2) EVALUATION OF PERMITS- In carrying out this section, the Secretary shall ensure that the evaluation of permits carried out using funds accepted under this section shall--

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(A) be reviewed by the Regional Director of the Bureau of Reclamation, or the Regional Director's designee, of the region in which the qualifying project or activity is located; and

(B) use the same procedures for decisions that would otherwise be required for the evaluation of permits for similar projects or activities not carried out using funds authorized under this section.

(3) IMPARTIAL DECISIONMAKING- In carrying out this section, the Secretary and the cooperating agencies receiving funds under this section for qualifying projects shall ensure that the use of the funds accepted under this section for such projects shall not--

(A) impact impartial decisionmaking with respect to the issuance of permits, either substantively or procedurally; or

(B) diminish, modify, or otherwise affect the statutory or regulatory authorities of such agencies.

(c) Limitation on Use of Funds- None of the funds accepted under this section shall be used to carry out a review of the evaluation of permits required under subsection (b)(2)(A).

(d) Public Availability- The Secretary shall ensure that all final permit decisions carried out using funds authorized under this section are made available to the public, including on the Internet.

**Commented [A45]:** I just replaced their language with the language from our One stop shop dam permitting bill.

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**From:** Watts, John (Feinstein)  
**Sent:** Friday, October 31, 2014 12:45 PM  
**To:** Tom Birmingham  
**CC:** Bernhardt, David L.  
**Subject:** Projections on how the bad it will be for farmers if the drought persists next year

Tom,

We are starting to think about how we will make the case for the water bill when we release a draft. I have been under the impression for a while that if next year is also dry, impacts could be multiple times worse than they were this year.

Can you help us with making the case here?

Below are two examples of articles from a few months ago on how bad things could get and how likely that might be. There have to be more recent projections.

Thanks.

John

## **Drought Outlook: ‘Disastrous Consequences’ If 2015 Is Dry**

[Craig Miller](#), [KQED Science](#) | June 11, 2014 | 1 Comment

The assertion in a new report on California’s long-term water woes likely comes as no surprise to most Californians:

“A dry 2015 would have disastrous consequences for agencies and sectors up and down the state.”

That ominous prediction is part of a “[drought action report](#)” released this week by the [Association of California Water Agencies](#), whose members manage about 90 percent of Californians’ water. The document attempts to identify key vulnerabilities to the state’s water system and offers recommendations that its authors say could stave off the worst impacts of a protracted drought.

“Hundreds of thousands of acres of annual and permanent crops throughout the state would be idled,” the report goes on, “affecting the growers, local communities, related industries and the statewide economy.”

By example, it specifically mentions the Oakdale Irrigation District, which the report says will likely run through all its water reserves just to get through this year, “so if 2015 is dry, the district would likely need to idle nearly one-third of its acreage, or 20,000 acres.”

It gets worse:

In a worst case scenario for the agricultural industry, cotton production in California’s San Joaquin Valley could cease completely, resulting in severe economic losses from crop revenue, employment, shipping and more. Even agencies with [access to groundwater](#) in 2014 would likely have to contend with an increasing number of challenges including reduced water quality, higher energy costs, and subsidence.

These kinds of projections loom especially scary since there's no way to know what next year will bring. California has had [multi-decade "megadroughts"](#) in the distant past and weathered a six-year drought from 1987-92 — but that drought did not have the precipitous nature of this one. Three years into [the current dry spell](#), the state has already logged its driest calendar year on record.



A rock barrier installed to block saltwater migration into the Delta in 1976. (DWR)

Another year like this one would almost certainly force some extreme countermeasures that officials hope to avoid. Earlier this year, plans were laid for a \$30 million series of rock barriers, designed to keep saltwater from pushing deeper into the Sacramento-San Joaquin Delta — something that hasn't been necessary since the epic drought of 1976-77. Officials shelved those plans when river flows perked up after some rains in February, but would most likely need to revive the plan after another dry winter.

## **'The odds of another 2014 are really low.'** – Jeanine Jones, DWR

But forecasters say the odds are on our side.

"Statistically speaking the odds of a fourth dry year are low and the odds of 'another 2014' are really low," says Jeanine Jones, deputy drought manager with the California Department of Water Resources. What's more likely, says Jones, is a "mixed cycle" comprising several consecutive dry years, interspersed with an occasional wet one, akin to what the Colorado River has seen over the past 11 years.

And [don't count on El Niño](#) to bail us out. Although the legendary harbinger of rain has been on everyone's lips like a mantra lately, much of the periodic warming in the Pacific Ocean's link to precipitation is more legend than reality. Though [current forecasts](#) call for moderate El Niño conditions to be in place by this fall, the correlation between El Niño and California precipitation is relatively shaky.

"Unfortunately," says Jones, "the science of seasonal climate forecasting is not very good at this point." It's likely to be December or later before we have a sense of whether the drought will hang around for a fourth year. If it does, water managers don't want to contemplate the potential mayhem.



Asked at a Sacramento drought briefing what the farm belt was doing to gird for another drought year, Terry Erlewine, general manager of State Water Contractors said, “There’s no way you can plan for that.”

Steve Ottemoeller, water resources manager at the Friant Water Authority noted that whatever carry-over supply there is this year will be gone after another dry winter. “They’re probably as ready as they can be,” he said of his ag customers in the San Joaquin Valley. “Most of them are just trying to get through this year.” He also predicted that the water wars would intensify in the courts. “A lot of the preparation will be gearing up for the fight.”

## Will California’s drought extend into 2015?

Posted on [June 15, 2014](#) by [UC Davis Center for Watershed Sciences](#)

*By Jay Lund and Jeffrey Mount*

Debates over how to manage California’s critically dry water supplies this year have displaced most discussion about water *next* year.

This year’s drought is bad, but another dry year that begins with even lower groundwater and reservoir levels could be much worse. The state’s reservoir storage is already at [near-record lows](#) for this time of year, and accelerated [overdraft of groundwater](#) — the state’s most important drought reserves — is likely to limit its availability.

How likely will next water year be dry?

### What history tells us about next year

The historical record, imperfect and limited as it is, provides some information on the odds of water conditions improving or worsening.

California’s Department of Water Resources divides all water years (October to September) into five “year-types”: Critically Dry, Dry, Below Normal, Above Normal and Wet. This year the Central Valley is Critically Dry; last year was Dry and the year before that was Below Average.

Table 1 shows the percent of years from the historical record in each category, and the percent of years in each category if the previous year, like this one, was critically dry.

Based on 106 years of record, only 13 percent of years have been Critically Dry. But the odds facing California for next year aren’t as good. In the Sacramento Valley — the state’s largest source of water supply — there’s a 29 percent chance that the 2014-15 water year will also be Critically Dry, and a 64 percent chance that it will be Dry or Critically Dry — not favorable conditions for water management.

In all, there’s a 71 percent chance that next year will be Below Normal or drier and only a 29 percent chance of experiencing an Above Normal or Wet year.

**Table 1. Critically dry years are usually followed by fairly dry conditions**

Year Types	Sacramento Valley		San Joaquin Valley	
	Historical frequency (%) <sup>*</sup>	Likelihood following a critically dry year (%)	Historical frequency (%)	Likelihood following a critically dry year (%)
Critically Dry	13	29	18	55
Dry	21	35	14	0
Below Normal	18	7	16	15
Above Normal or Wet	48	29	52	30

**\*Source: Precipitation indices for Sacramento and San Joaquin valleys, 1906-2013**

Years with dry conditions (critically dry, dry and below normal years) are likely to be followed by dry conditions for three reasons. First, dry and wet patterns are driven by climate mechanisms that commonly extend over several years, often decades, making it more likely that any one year will be followed by one like it. Second, low moisture levels from a previous dry year will absorb some moisture in later years to reduce runoff. Third, a portion of the California Department of Water Resources index used to define a water year depends on precipitation from the previous year, which increases the likelihood that the following year will be like the previous. Even when annual flow data alone are used — eliminating the DWR index's dependence on the previous year — critically dry years are more than twice as likely to occur if preceded by a critically dry year.

### What about El Niño?

The news abounds with hopeful statements about Pacific winds and sea surface temperatures heralding an [El Niño](#). The periodic shift of warm water from the Western to the Eastern Pacific [known as the El Niño Southern Oscillation (ENSO)] is linked to weather extremes over much of the globe.

Meteorologists have long noted that intense El Niño events are commonly associated with high precipitation in Southern California. Though, historically, odds are against improved water conditions next year, an El Niño could end California's drought.

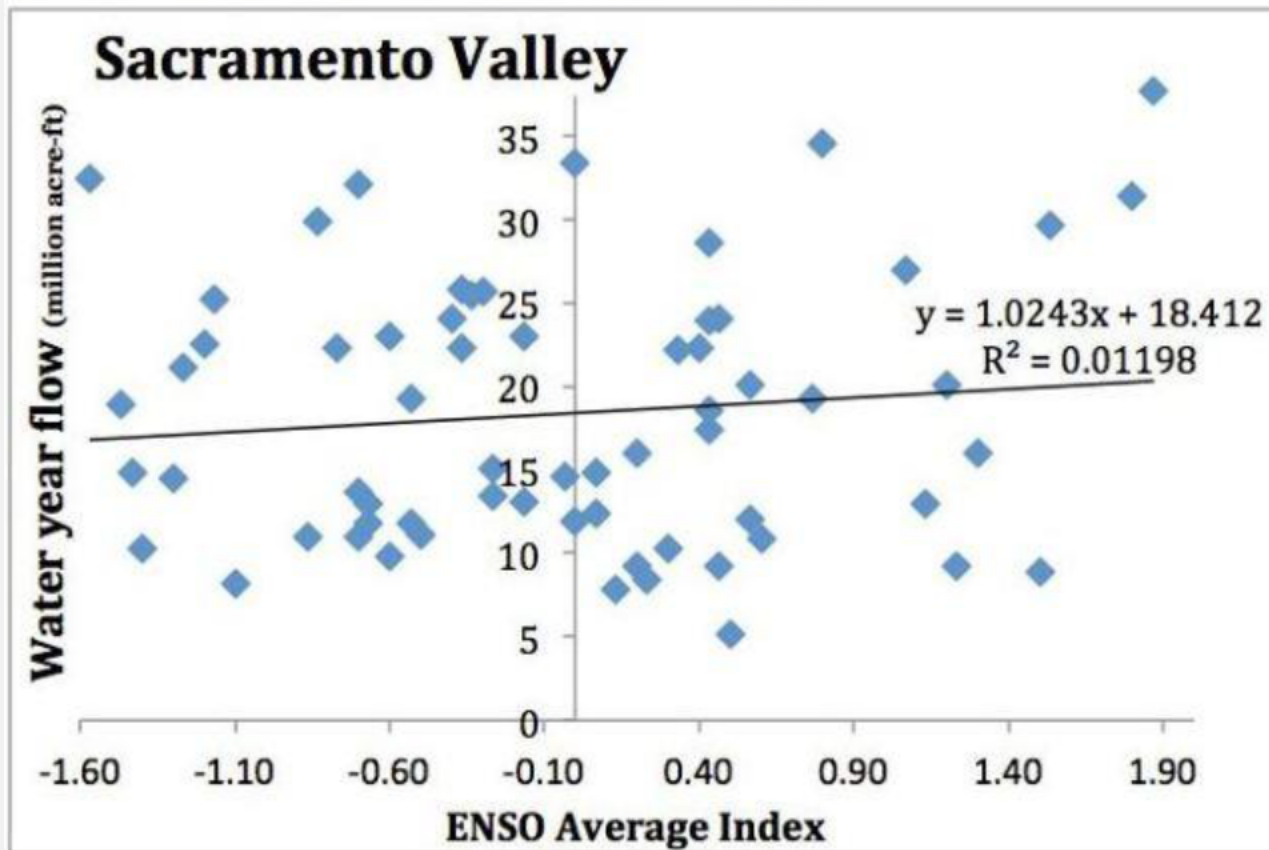
The relationship between the ENSO index and annual runoff in the Sacramento and San Joaquin river basins since 1950 is plotted in Figure 1. Although ENSO may signal significant weather changes elsewhere in the world, it has little predictive capacity in Northern California where most of the state's precipitation occurs. (It has better predictive value for [Southern California](#)).

Note in Figure 1 that three of the four largest ENSO events are associated with very wet conditions. Two of these — water years 1983 and 1998 — were record-breaking wet years. This seems to offer a glimmer of hope. But the numerous [dynamic and statistical models](#) that predict ENSO conditions into



the new water year have positive, but disappointingly weak ENSO values. An El Niño may turn out to be closer to La Nada if the projections of these models bear out.

**Figure 1. ENSO conditions don't help predict annual streamflow for the Sacramento or San Joaquin river basins**



[ENSO index](#) plotted here is average of December-April for each water year

### Hope is not a strategy

During a severe drought, water managers and regulators must balance water deliveries in the current year against saving water for unknown conditions in coming years. It is statistically likely the drought will continue into next year. We all hope wet weather returns to California soon. But, given the odds, it makes sense to prepare for another dry year.

*Jay Lund is a professor of civil and environmental engineering and director of the Center for Watershed Sciences at UC Davis. Jeffrey Mount, a UC Davis professor emeritus of geology, is a senior fellow at the Public Policy Institute of California.*

**From:** Tom Birmingham  
**Sent:** Friday, October 31, 2014 1:07 PM  
**To:** 'Watts, John (Feinstein)'  
**CC:** 'Bernhardt, David L.'  
**Subject:** RE: Projections on how the bad it will be for farmers if the drought persists next year  
**Attachments:** 10.15.14 Notice No. 434 Email Only.pdf

John,

I do not know if this helps, but attached is a notice issued by Westlands Water District on October 15. The notice includes a forecast of allocations based on water year type and the degree to which the biological opinions limit operations of the CVP. As indicated, even if we have an average year, which would fall into the below normal classification, the allocation initial and final allocation for CVP ag water service contractors is likely to be zero. The only way in which we could obtain any water is if restrictions under the biological opinions are minimal, which would be the result of enactment of the drought legislation.

Tom

---

**From:** Watts, John (Feinstein) [mailto:John\_Watts@feinstein.senate.gov]  
**Sent:** Friday, October 31, 2014 12:45 PM  
**To:** Tom Birmingham  
**Cc:** Bernhardt, David L.  
**Subject:** Projections on how the bad it will be for farmers if the drought persists next year

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[Craig Miller](#), [KQED Science](#) | June 11, 2014 | 1 Comment

The assertion in a new report on California’s long-term water woes likely comes as no surprise to most Californians:

“A dry 2015 would have disastrous consequences for agencies and sectors up and down the state.”

That ominous prediction is part of a “[drought action report](#)” released this week by the [Association of California Water Agencies](#), whose members manage about 90 percent of Californians’ water. The document attempts to

identify key vulnerabilities to the state's water system and offers recommendations that its authors say could stave off the worst impacts of a protracted drought.

"Hundreds of thousands of acres of annual and permanent crops throughout the state would be idled," the report goes on, "affecting the growers, local communities, related industries and the statewide economy."

By example, it specifically mentions the Oakdale Irrigation District, which the report says will likely run through all its water reserves just to get through this year, "so if 2015 is dry, the district would likely need to idle nearly one-third of its acreage, or 20,000 acres."

It gets worse:

In a worst case scenario for the agricultural industry, cotton production in California's San Joaquin Valley could cease completely, resulting in severe economic losses from crop revenue, employment, shipping and more. Even agencies with [access to groundwater](#) in 2014 would likely have to contend with an increasing number of challenges including reduced water quality, higher energy costs, and subsidence.

These kinds of projections loom especially scary since there's no way to know what next year will bring. California has had [multi-decade "megadroughts"](#) in the distant past and weathered a six-year drought from 1987-92 — but that drought did not have the precipitous nature of this one. Three years into [the current dry spell](#), the state has already logged its driest calendar year on record.



A rock barrier installed to block saltwater migration into the Delta in 1976. (DWR)

Another year like this one would almost certainly force some extreme countermeasures that officials hope to avoid. Earlier this year, plans were laid for a \$30 million series of rock barriers, designed to keep saltwater from pushing deeper into the Sacramento-San Joaquin Delta — something that hasn't been necessary since the epic drought of 1976-77. Officials shelved those plans when river flows perked up after some rains in February, but would most likely need to revive the plan after another dry winter.

**'The odds of another 2014 are really low.'** – Jeanine Jones, DWR

But forecasters say the odds are on our side.

“Statistically speaking the odds of a fourth dry year are low and the odds of ‘another 2014’ are really low,” says Jeanine Jones, deputy drought manager with the California Department of Water Resources. What’s more likely, says Jones, is a “mixed cycle” comprising several consecutive dry years, interspersed with an occasional wet one, akin to what the Colorado River has seen over the past 11 years.

And [don’t count on El Niño](#) to bail us out. Although the legendary harbinger of rain has been on everyone’s lips like a mantra lately, much of the periodic warming in the Pacific Ocean’s link to precipitation is more legend than reality. Though [current forecasts](#) call for moderate El Niño conditions to be in place by this fall, the correlation between El Niño and California precipitation is relatively shaky.

“Unfortunately,” says Jones, “the science of seasonal climate forecasting is not very good at this point.” It’s likely to be December or later before we have a sense of whether the drought will hang around for a fourth year. If it does, water managers don’t want to contemplate the potential mayhem.

Asked at a Sacramento drought briefing what the farm belt was doing to gird for another drought year, Terry Erlewine, general manager of State Water Contractors said, “There’s no way you can plan for that.”

Steve Ottemoeller, water resources manager at the Friant Water Authority noted that whatever carry-over supply there is this year will be gone after another dry winter. “They’re probably as ready as they can be,” he said of his ag customers in the San Joaquin Valley. “Most of them are just trying to get through this year.” He also predicted that the water wars would intensify in the courts. “A lot of the preparation will be gearing up for the fight.”

## Will California’s drought extend into 2015?

Posted on [June 15, 2014](#) by [UC Davis Center for Watershed Sciences](#)

*By Jay Lund and Jeffrey Mount*

Debates over how to manage California’s critically dry water supplies this year have displaced most discussion about water *next* year.

This year’s drought is bad, but another dry year that begins with even lower groundwater and reservoir levels could be much worse. The state’s reservoir storage is already at [near-record lows](#) for this time of year, and accelerated [overdraft of groundwater](#) — the state’s most important drought reserves — is likely to limit its availability.

How likely will next water year be dry?

### What history tells us about next year

The historical record, imperfect and limited as it is, provides some information on the odds of water conditions improving or worsening.

California’s Department of Water Resources divides all water years (October to September) into five “year-types”: Critically Dry, Dry, Below Normal, Above Normal and Wet. This year the Central Valley is Critically Dry; last year was Dry and the year before that was Below Average.



Table 1 shows the percent of years from the historical record in each category, and the percent of years in each category if the previous year, like this one, was critically dry.

Based on 106 years of record, only 13 percent of years have been Critically Dry. But the odds facing California for next year aren't as good. In the Sacramento Valley — the state's largest source of water supply — there's a 29 percent chance that the 2014-15 water year will also be Critically Dry, and a 64 percent chance that it will be Dry or Critically Dry — not favorable conditions for water management.

In all, there's a 71 percent chance that next year will be Below Normal or drier and only a 29 percent chance of experiencing an Above Normal or Wet year.

Table 1. Critically dry years are usually followed by fairly dry conditions				
	Sacramento Valley		San Joaquin Valley	
Year Types	Historical frequency (%)*	Likelihood following a critically dry year (%)	Historical frequency (%)	Likelihood following a critically dry year (%)
Critically Dry	13	29	18	55
Dry	21	35	14	0
Below Normal	18	7	16	15
Above Normal or Wet	48	29	52	30

\*Source: Precipitation indices for Sacramento and San Joaquin valleys, 1906-2013

Years with dry conditions (critically dry, dry and below normal years) are likely to be followed by dry conditions for three reasons. First, dry and wet patterns are driven by climate mechanisms that commonly extend over several years, often decades, making it more likely that any one year will be followed by one like it. Second, low moisture levels from a previous dry year will absorb some moisture in later years to reduce runoff. Third, a portion of the California Department of Water Resources index used to define a water year depends on precipitation from the previous year, which increases the likelihood that the following year will be like the previous. Even when annual flow data alone are used — eliminating the DWR index's dependence on the previous year — critically dry years are more than twice as likely to occur if preceded by a critically dry year.

What about El Niño?

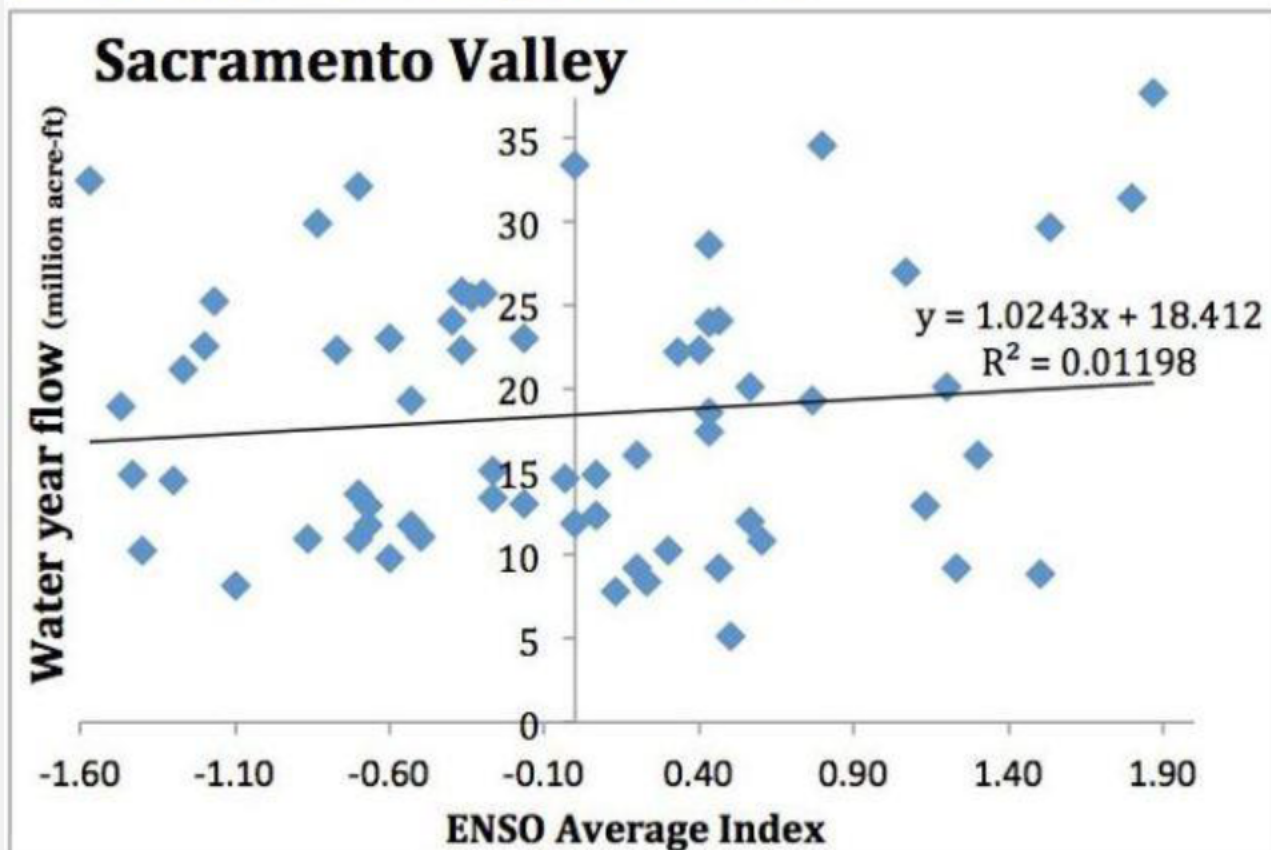
The news abounds with hopeful statements about Pacific winds and sea surface temperatures heralding an [El Niño](#). The periodic shift of warm water from the Western to the Eastern Pacific [known as the El Niño Southern Oscillation (ENSO)] is linked to weather extremes over much of the globe.

Meteorologists have long noted that intense El Niño events are commonly associated with high precipitation in Southern California. Though, historically, odds are against improved water conditions next year, an El Niño could end California's drought.

The relationship between the ENSO index and annual runoff in the Sacramento and San Joaquin river basins since 1950 is plotted in Figure 1. Although ENSO may signal significant weather changes elsewhere in the world, it has little predictive capacity in Northern California where most of the state's precipitation occurs. (It has better predictive value for [Southern California](#)).

Note in Figure 1 that three of the four largest ENSO events are associated with very wet conditions. Two of these – water years 1983 and 1998 – were record-breaking wet years. This seems to offer a glimmer of hope. But the numerous [dynamic and statistical models](#) that predict ENSO conditions into the new water year have positive, but disappointingly weak ENSO values. An El Niño may turn out to be closer to La Nada if the projections of these models bear out.

**Figure 1. ENSO conditions don't help predict annual streamflow for the Sacramento or San Joaquin river basins**



[ENSO index](#) plotted here is average of December-April for each water year

### Hope is not a strategy

During a severe drought, water managers and regulators must balance water deliveries in the current year against saving water for unknown conditions in coming years. It is statistically likely the drought will continue into next year. We all hope wet weather returns to California soon. But, given the odds, it makes sense to prepare for another dry year.

*Jay Lund is a professor of civil and environmental engineering and director of the Center for Watershed Sciences at UC Davis. Jeffrey Mount, a UC Davis professor emeritus of geology, is a senior fellow at the Public Policy Institute of California.*



# Westlands Water District

3130 N. Fresno Street, P.O. Box 6056, Fresno, California 93703-6056, (559) 224-1523, FAX (559) 241-6277

October 15, 2014

*This notice contains important information about the following:*

- **2015 Projected CVP Water Supply**

## **2015 Projected CVP Water Supply**

A number of questions have been asked by Westlands Water District growers concerning the apparent discrepancy between projections of water allocations by Westlands and the San Luis & Delta Mendota Water Authority for the 2015 contract year (March 1, 2015 – February 29, 2016). Westlands staff has projected that, absent significant precipitation in November, December, and January, the initial allocation for 2015 will be zero. The Authority staff has issued a projection that under “average conditions,” the allocation for 2015 could be 15–35%. On their face these projections seem inconsistent, but the projections are not comparable. The previously stated Westlands projection concerns the initial allocation, while the Authority projection concerns the final allocation.

To avoid further confusion, the Westlands staff has prepared the following table with forecasted initial and final allocations. This table is in the same format Westlands used in 2014 to provide growers with potential allocations under various scenarios. In addition to differentiating between initial and final allocations, the table contains a forecasted range of allocations based on the water year classification and the degree to which biological opinions restrict operations of the Central Valley Project.

2015 Contract Year South-of-Delta CVP Water Supply Allocation Forecast						
Water Year Type	Delta Pumping Restrictions Imposed Under Biological Opinions					
	Maximum Restriction		Moderate Restriction		Minimal Restriction	
	Initial Allocation	Final Allocation	Initial Allocation	Final Allocation	Initial Allocation	Final Allocation
Wet	0-10%	35-45%	0-25%	35-50%	0-25%	50-65%
Above Normal	0-5%	25-30%	0-10%	25-35%	0-15%	35-50%
Below Normal	0%	0-15%	0%	0-20%	0%	0-25%
Dry	0%	0%	0%	0-5%	0%	0-10%
Critically Dry	0%	0%	0%	0%	0%	0%



It is important to note that absent above-average precipitation during the November through January period, the initial allocation for south-of-Delta CVP agricultural service contractors will be zero.

If you have any questions, please contact Jose Gutierrez, the District's Deputy General Manager for Resources, by telephone at (559) 241-6215 or by email at [jgutierrez@westlandswater.org](mailto:jgutierrez@westlandswater.org).

No. 434

**From:** Tom Birmingham  
**Sent:** Friday, October 31, 2014 4:30 PM  
**To:** 'Walthall, Brent'  
**CC:** 'Poole, Melissa'; 'Bernhardt, David L.'  
**Subject:**

Brent,

Today I received what was represented to be Kyle Lombardi's changes to section 501, which is different than the language that was previously represented to be the agreement between Friant and Kern. It reads:

**SEC. 501. PROTECTIONS FOR STATE WATER PROJECT CONTRACTORS.**

If, as a result of the application of this Act, the California Department of Fish and Wildlife:

- (a) revokes the consistency determinations pursuant to California Fish and Game Code section 2080.1 that are applicable to the State Water Project;
- (b) amends or issues one or more new consistency determinations pursuant to California Fish and Game Code section 2080.1 in a manner that results in reduced water supply to the State Water Project as compared with the water supply available under the Smelt Biological Opinion and the Salmonid Biological Opinion; or
- (c) requires take authorization under section 2081 for operation of the State Water Project in a manner that results in reduced water supply to the State Water Project as compared with the water supply available under the Smelt Biological Opinion and the Salmonid Biological Opinion, and as a consequence, there is an increase in Central Valley Project yield, any such increase shall be shared equally with the State Water Project. Prior to implementing this Act, the Secretary shall request written notification from the California Department of Fish and Wildlife indicating whether implementation of this Act will affect the status of consistency determinations for operation of the State Water Project.

If the above language represents your proposal to Kyle, Westlands has no objections, except for the last sentence. I do not believe the Secretary should have to confer with the state before implementing this act. However, it is not a deal killer.

Tom